

LUBECK PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2005 A
(WEST VIRGINIA INFRASTRUCTURE FUND),
SEWER REVENUE BONDS, SERIES 2005 B
(WEST VIRGINIA INFRASTRUCTURE FUND) AND
SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2005
(WEST VIRGINIA INFRASTRUCTURE FUND)

Closing Date: September 27, 2005

TRANSCRIPT OF PROCEEDINGS

<u>DOCUMENT NO.</u>	<u>DESCRIPTION</u>	<u>INDEX NO.</u>
---------------------	--------------------	------------------

I. Organizational Documents

1.1	Certified copies of Chapter 16, Article 13A and Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended.	1
1.2	Orders of The County Commission of Wood County Creating and Enlarging Lubeck Public Service District (the "Issuer").	2
1.3	Orders of The County Commission of Wood County Appointing Members of the Public Service Board of the Issuer (the "Board").	3
1.4	Oaths of Office of the Board Members.	4
1.5	Rules of Procedure.	5
1.6	Minutes of Current Year Organizational Meeting.	6

II. Authorizing Documents

2.1	Public Service Commission Order.	7
-----	----------------------------------	---

2.2	Infrastructure Council Approval Letter.	8
2.3	Infrastructure Council Loan Agreements.	9
2.4	Bond and Note Resolution.	10
2.5	Supplemental Resolution.	11
2.6	Minutes of Board Meeting regarding Adoption of Bond and Note Resolution and Supplemental Resolution.	12
2.7	Affidavit of Publication regarding Notice of Meeting to Adopt Bond and Note Resolution and Supplemental Resolution.	13
2.8	Specimen Bonds and Note.	14
2.9	Bond and Note Registers.	15
2.10	1999 Bond Resolution.	16
2.11	WDA Consent to Issuance of Bonds and Notes.	17
	<u>III. Certificates, Receipts and Other Documents</u>	
3.1	General Certificate.	18
3.2	Certificate as to Use of Proceeds.	19
3.3	Certificate of Secretary as to Truth and Accuracy of Documents Delivered.	20
3.4	Certificate of Accountant.	21
3.5	Receipt for Bonds and Notes.	22
3.6	Receipt for Note Proceeds and Prior Notes.	23
3.7	Request and Authorization to Authenticate, Register and Deliver the Bonds and Notes.	24

3.8	Registrar's Agreement.	25
3.9	Certificate of Registration.	26
3.10	Municipal Bond Commission New Issue Report Forms.	27
3.11	NPDES Permit.	28
3.12	Insurance Certificates.	29
3.13	Receipt of Exchange of Prior Notes for 2005 Bonds and Notes.	30
3.14	Closing Memorandum.	31

IV. Opinions

4.1	Opinion of Jackson Kelly PLLC, Bond Counsel, on Series 2005 A Bonds.	32
4.2	Opinion of Jackson Kelly PLLC, Bond Counsel, on Series 2005 B Bonds.	33
4.3	Opinion of Jackson Kelly PLLC, Bond Counsel, on Series 2005 Notes.	34
4.4	Opinion of Counsel to Issuer.	35

08/26/05
101090/00309



Certificate

*I, Betty Ireland, Secretary of State of the
State of West Virginia, hereby certify that*

**THIS IS A TRUE COPY OF CHAPTER 16, ARTICLE 13A OF THE WEST
VIRGINIA CODE; CHAPTER 16, ARTICLE 13A OF THE 2004 SUPPLEMENT
TO THE WEST VIRGINIA CODE; HB 3045 AND HB 3280 BOTH PASSED
APRIL 9, 2005 AND BOTH EFFECTIVE FROM JULY 8, 2005 AND SB 749
PASSED APRIL 8, 2005 AND EFFECTIVE FROM JULY 7, 2005 AS
INDICATED BY THE RECORDS OF THIS OFFICE.**



*Given under my hand and the
Great Seal of the State of
West Virginia on*

September 13, 2005

Betty Ireland
Secretary of State

jurisdiction and authority provided by this section does not extend to highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways and no rates, fees or charges for stormwater services or costs of compliance may be assessed against highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways. (1955, c. 135; 1967, c. 105; 1994, c. 61; 2001, c. 212.)

Effect of amendment of 2001. — Acts 2001, c. 212, effective July 13, 2001, substituted "the" for "such" throughout, substituted "the" for "said" throughout, inserted "fees" following "rates" throughout; in the first paragraph, inserted "and/or stormwater system" following "existing sewer system", inserted "or stormwater system" following "such sewer system"; in the second paragraph, inserted "or stormwater" following "sewage", inserted "or

stormwater facilities" following "sewer facilities"; in the fourth paragraph, added "or entire stormwater works" to the end; in the sixth paragraph, deleted "such" following "fixing" and "publication of"; in the eighth paragraph, deleted "such" preceding "rates" twice; and in the last paragraph, added the proviso.

Applied in *City of Morgantown v. Town of Star City*, 156 W. Va. 529, 195 S.E.2d 166 (1973).

§ 16-13-24. Article to be construed liberally.

This article being necessary for the public health, safety and welfare, it shall be liberally construed to effectuate the purpose thereof. (1933, Ex. Sess., c. 25, § 24.)

Quoted in *West Virginia Water Serv. Co. v. Cunningham*, 143 W. Va. 1, 98 S.E.2d 891 (1957).

ARTICLE 13A.

PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.

Sec.

16-13A-1. Legislative findings.

16-13A-1a. Jurisdiction of the public service commission.

16-13A-1b. County commissions to develop plan to create, consolidate, merge, expand or dissolve public service districts.

16-13A-1c. General purpose of districts.

16-13A-2. Creation of districts by county commission; enlarging, reducing, merging, or dissolving district; consolidation; agreements, etc.; infringing upon powers of county commission; filing list of members and districts with the secretary of state.

16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.

Sec.

16-13A-3a. Removal of members of public service board.

16-13A-4. Board chairman; members' compensation; procedure; district name.

16-13A-5. General manager of board.

16-13A-6. Employees of board.

16-13A-7. Acquisition and operation of district properties.

16-13A-8. Acquisition and purchase of public service properties; right of eminent domain; extraterritorial powers.

16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.

16-13A-9a. Limitations with respect to foreclosure.

- | | |
|--|--|
| <p>Sec.
 16-13A-10. Budget.
 16-13A-11. Accounts; audit.
 16-13A-12. Disbursement of district funds.
 16-13A-13. Revenue bonds.
 16-13A-14. Items included in cost of properties.
 16-13A-15. Bonds may be secured by trust indenture.
 16-13A-16. Sinking fund for revenue bonds.
 16-13A-17. Collection, etc., of revenues and enforcement of covenants; default; suit, etc., by bondholder or trustee to compel performance of duties; appointment and powers of receiver.
 16-13A-18. Operating contracts.
 16-13A-18a. Sale, lease or rental of water, sewer or gas system by district; distribution of proceeds.</p> | <p>Sec.
 16-13A-19. Statutory mortgage lien created; foreclosure thereof.
 16-13A-20. Refunding revenue bonds.
 16-13A-21. Complete authority of article; liberal construction; district to be public instrumentality; tax exemption.
 16-13A-22. Validation of prior acts and proceedings of county courts for creation of districts, inclusion of additional territory, and appointment of members of district boards.
 16-13A-23. Validation of acts and proceedings of public service boards.
 16-13A-24. Acceptance of loans, grants or temporary advances.
 16-13A-25. Borrowing and bond issuance; procedure.</p> |
|--|--|

Textbooks. — Instructions for Virginia and West Virginia, Publisher's Editorial Staff (Michie).

Constitutionality. — The act from which this article was derived, authorizing the creation of public service districts by the county courts of this State, defining the powers and duties of the governing boards of such districts in the acquisition, construction, maintenance, operation, improvement and extension of property supplying water and sewerage services, and authorizing the issuance of bonds of such districts payable solely from revenue to be derived from the operation of such properties, does not violate any provision of the Constitution of this State or the Fourteenth Amendment to the Constitution of the United States. *State ex rel. McMillion v. Stahl*, 141 W. Va. 233, 89 S.E.2d 693 (1955).

Purpose. — The purpose of this article is to provide water and sewerage facilities in unincorporated districts. *State ex rel. McMillion v. Stahl*, 141 W. Va. 233, 89 S.E.2d 693 (1955).

The title to Acts 1953, c. 147, is sufficient to give a fair and reasonable index to all of the purposes of the act. *State ex rel. McMillion v. Stahl*, 141 W. Va. 233, 89 S.E.2d 693 (1955).

Public utilities. — Public service districts are "public utilities" because they are required to pay a special license fee pursuant to § 24-3-6 for support of the public service commission. 50 Op. Att'y Gen. 447 (1963).

Cited in *Berkeley County Pub. Serv. Dist. v. Vitro Corp. of Am.*, 152 W. Va. 252, 162 S.E.2d 189 (1968); *State v. Neary*, 179 W. Va. 115, 365 S.E.2d 395 (1987); *McClung Invs., Inc. v. Green Valley Community Pub. Serv. Dist.*, 199 W. Va. 490, 485 S.E.2d 434 (1997).

§ 16-13A-1. Legislative findings.

The Legislature of the state of West Virginia hereby determines and finds that the present system of public service districts within the state has provided a valuable service at a reasonable cost to persons who would otherwise have been unable to obtain public utility services. To further this effort, and to ensure that all areas of the state are benefiting from the availability of public service district utility services and to further correct areas with health hazards, the Legislature concludes that it is in the best interest of the public to implement better management of public service district resources by expanding the ability and the authority of the public service commission to assist public service districts by offering advice and assistance in operational, financial and regulatory affairs.

In addition to the expanded powers which shall be given to the public service commission, the Legislature also concludes that it is in the best interest of the public for each county commission to review current technology available and consider consolidating existing public service districts where it is feasible and will not result in the interference with existing bond instruments. Further, if such consolidation is not feasible, the Legislature finds that it is in the best interest of the public for each county commission to review current technology available and consider consolidating or centralizing the management of public service districts within its county or multi-county area to achieve efficiency of operations. The Legislature also finds that additional guidelines should be imposed on the creation of new public service districts and that county commissions shall dissolve inactive public service districts as hereinafter provided. The Legislature also finds that the public service commission shall promulgate rules and regulations to effectuate the expanded powers given to the commission relating to public service districts. (1953, c. 147; 1980, c. 60; 1986, c. 81.)

Authority of county commissions. — The county courts (now county commissions) may not supersede the authority delegated by them to public service districts created in accordance with the provisions of this article. Op. Att'y Gen., June 27, 1973.

Public service district — Authority. — A public service district, which was created only for the purposes of furnishing water services, has no power to condemn real estate for sewerage facilities. Canyon Pub. Serv. Dist. v. Tasa

Coal Co., 156 W. Va. 606, 195 S.E.2d 647 (1973).

Public service district — Purpose. — The purpose for the creation of a public service district may be ascertained by a review of the order establishing the district and the history behind the creation of the district (the notice of hearing and hearings held prior to the creation of the district). Op. Att'y Gen., July 8, 1976.

Cited in State ex rel. APCO v. Gainer, 149 W. Va. 740, 143 S.E.2d 351 (1965); **Shobe v. Latimer,** 162 W. Va. 779, 253 S.E.2d 54 (1979).

§ 16-13A-1a. Jurisdiction of the public service commission.

The jurisdiction of the public service commission relating to public service districts shall be expanded to include the following powers, and such powers shall be in addition to all other powers of the public service commission set forth in this code:

(a) To study, modify, approve, deny or amend the plans created under section one-b [§ 16-13A-1b] of this article for consolidation or merger of public service districts and their facilities, personnel or administration;

(b) To petition the appropriate circuit court for the removal of a public service district board member or members; and

(c) To create by general order a separate division within the public service commission to provide assistance to public service districts in technological, operational, financial and regulatory matters. (1986, c. 81.)

Cited in State ex rel. Water Dev. Auth. v. Northern Wayne County Pub. Serv. Dist., 195 W. Va. 135, 464 S.E.2d 777 (1995).

§ 16-13A-1b. County commissions to develop plan to create, consolidate, merge, expand or dissolve public service districts.

Each county commission shall conduct a study of all public service districts which have their principal offices within its county and shall develop a plan relating to the creation, consolidation, merger, expansion or dissolution of such districts or the consolidation or merger of management and administrative services and personnel and shall present such plan to the public service commission for approval, disapproval, or modification: Provided, That within ninety days of the effective date of this section each county commission in this state shall elect either to perform its own study or request that the public service commission perform such study. Each county commission electing to perform its own study has one year from the date of election to present such plan to the public service commission. For each county wherein the county commission elects not to perform its own study, the public service commission shall conduct a study of such county. The public service commission shall establish a schedule for such studies upon a priority basis, with those counties perceived to have the greatest need of creation or consolidation of public service districts receiving the highest priority. In establishing the priority schedule, and in the performance of each study, the bureau of public health and the division of environmental protection shall offer their assistance and cooperation to the public service commission. Upon completion by the public service commission of each study, it shall be submitted to the appropriate county commission for review and comment. Each county commission has six months in which to review the study conducted by the public service commission, suggest changes or modifications thereof, and present such plan to the public service commission. All county plans, whether conducted by the county commission itself or submitted as a result of a public service commission study, shall, by order, be approved, disapproved or modified by the public service commission in accordance with rules promulgated by the public service commission and such order shall be implemented by the county commission. (1986, c. 81; 1994, c. 61.)

§ 16-13A-1c. General purpose of districts.

Any territory constituting the whole or any part of one or more counties in the state so situated that the construction or acquisition by purchase or otherwise and the maintenance, operation, improvement and extension of, properties supplying water or sewerage services or gas distribution services or all of these within such territory, will be conducive to the preservation of the public health, comfort and convenience of such area, may be constituted a public service district under and in the manner provided by this article. The words "public service properties," when used in this article, shall mean and include any facility used or to be used for or in connection with (1) the diversion, development, pumping, impounding, treatment, storage, distribution or furnishing of water to or for the public for industrial, public, private or

other uses (herein sometimes referred to as "water facilities"), (2) the collection, treatment, purification or disposal of liquid or solid wastes, sewage or industrial wastes (herein sometimes referred to as "sewer facilities" or "landfills") or (3) the distribution or the furnishing of natural gas to the public for industrial, public, private or other uses (herein sometimes referred to as "gas utilities or gas system"). (1986, c. 81.)

§ 16-13A-2. Creation of districts by county commission; enlarging, reducing, merging, or dissolving district; consolidation; agreements, etc.; infringing upon powers of county commission; filing list of members and districts with the secretary of state.

(a) The county commission of any county may propose the creation, enlargement, reduction, merger, dissolution, or consolidation of a public service district by any of the following methods: (1) on its own motion by order duly adopted, (2) upon the recommendation of the public service commission, or (3) by petition of twenty-five percent of the registered voters who reside within the limits of the proposed public service district within one or more counties. The petition shall contain a description, including metes and bounds, sufficient to identify the territory to be embraced therein and the name of such proposed district: Provided, That after the effective date of this section, no new public service district shall be created, enlarged, reduced, merged, dissolved or consolidated under this section without the written consent and approval of the public service commission, which approval and consent shall be in accordance with rules promulgated by the public service commission and may only be requested after consent is given by the appropriate county commission or commissions pursuant to this section. Any territory may be included regardless of whether or not the territory includes one or more cities, incorporated towns or other municipal corporations which own and operate any public service properties and regardless of whether or not it includes one or more cities, incorporated towns or other municipal corporations being served by privately owned public service properties: Provided, however, That the same territory shall not be included within the boundaries of more than one public service district except where the territory or part thereof is included within the boundaries of a separate public service district organized to supply water, sewerage services or gas facilities not being furnished within such territory or part thereof: Provided further, That no city, incorporated town or other municipal corporation shall be included within the boundaries of the proposed district except upon the adoption of a resolution of the governing body of the city, incorporated town or other municipal corporation consenting.

(b) The petition shall be filed in the office of the clerk of the county commission of the county in which the territory to constitute the proposed district is situated, and if the territory is situated in more than one county, then the petition shall be filed in the office of the clerk of the county

commission of the county in which the major portion of the territory extends, and a copy thereof (omitting signatures) shall be filed with each of the clerks of the county commission of the other county or counties into which the territory extends. The clerk of the county commission receiving such petition shall present it to the county commission of the county at the first regular meeting after the filing or at a special meeting called for the consideration thereof.

(c) When the county commission of any county enters an order on its own motion proposing the creation, enlargement, reduction, merger, dissolution or consolidation of a public service district, as aforesaid, or when a petition for the creation is presented, as aforesaid, the county commission shall at the same session fix a date of hearing in the county on the creation, enlargement, reduction, merger, dissolution or consolidation of the proposed public service district, which date so fixed shall be not more than forty days nor less than twenty days from the date of the action. If the territory proposed to be included is situated in more than one county, the county commission, when fixing a date of hearing, shall provide for notifying the county commission and clerk thereof of each of the other counties into which the territory extends of the date so fixed. The clerk of the county commission of each county in which any territory in the proposed public service district is located shall cause notice of the hearing and the time and place thereof, and setting forth a description of all of the territory proposed to be included therein to be given by publication as a Class I legal advertisement in compliance with the provisions of article three [§§ 59-3-1 et seq.], chapter fifty-nine of this code, and the publication area for the publication shall be by publication in each city, incorporated town or municipal corporation if available in each county in which any territory in the proposed public service district is located. The publication shall be at least ten days prior to the hearing.

(d) In all cases where proceedings for the creation, enlargement, reduction, merger, dissolution or consolidation of the public service districts are initiated by petition as aforesaid, the person filing the petition shall advance or satisfactorily indemnify the payment of the cost and expenses of publishing the hearing notice, and otherwise the costs and expenses of the notice shall be paid in the first instance by the county commission out of contingent funds or any other funds available or made available for that purpose. In addition to the notice required herein to be published, there shall also be posted in at least five conspicuous places in the proposed public service district, a notice containing the same information as is contained in the published notice. The posted notices shall be posted not less than ten days before the hearing.

(e) All persons residing in or owning or having any interest in property in the proposed public service district shall have an opportunity to be heard for and against its creation, enlargement, reduction, merger, dissolution or consolidation. At the hearing the county commission before which the hearing is conducted shall consider and determine the feasibility of the creation, enlargement, reduction, merger, dissolution or consolidation of the proposed district. If the county commission determines that the construction or acquisition by purchase or otherwise and maintenance, operation, improvement and

extension of public service properties by the public service district will be conducive to the preservation of public health, comfort and convenience of such area, the county commission shall by order create, enlarge, reduce, merge, dissolve or consolidate such public service district. If the county commission, after due consideration, determines that the proposed district will not be conducive to the preservation of public health, comfort or convenience of the area or that the creation, enlargement, reduction, merger, dissolution or consolidation of the proposed district as set forth and described in the petition or order is not feasible, it may refuse to enter an order creating the district or it may enter an order amending the description of the proposed district and create, enlarge, reduce, merge, dissolve or consolidate the district as amended.

(f) If the county commission determines that any other public service district or districts can adequately serve the area of the proposed public service district, whether by enlargement, reduction, merger, dissolution or consolidation, it shall refuse to enter the order, but shall enter an order creating, enlarging, reducing, merging, dissolving or consolidating the area with an existing public service district, in accordance with rules adopted by the public service commission for such purpose: Provided, That no enlargement of a public service district may occur if the present or proposed physical facilities of the public service district are determined by the appropriate county commission or the public service commission to be inadequate to provide such enlarged service. The clerk of the county commission of each county into which any part of such district extends shall retain in his office an authentic copy of the order creating, enlarging, reducing, merging, dissolving or consolidating the district: Provided, however, That within ten days after the entry of an order creating, enlarging, reducing, merging, dissolving or consolidating a district, such order must be filed for review and approval by the public service commission. The public service commission shall provide a hearing in the affected county on the matter and may approve, reject or modify the order of the county commission if it finds it is in the best interests of the public to do so. The public service commission shall adopt rules relating to such filings and the approval, disapproval or modification of county commission orders for creating, enlarging, merging, dissolving or consolidating districts. The provisions of this section shall not apply to the implementation by a county commission of an order issued by the public service commission pursuant to this section and section one-b [§ 16-13A-1b] of this article.

(g) The county commission may, if in its discretion it deems it necessary, feasible and proper, enlarge the district to include additional areas, reduce the area of the district, where facilities, equipment, service or materials have not been extended, or dissolve the district if inactive or create or consolidate two or more such districts. If consolidation of districts is not feasible, the county commission may consolidate and centralize management and administration of districts within its county or multi-county area to achieve efficiency of operations: Provided, That where the county commission determines on its own motion by order entered of record, or there is a petition to enlarge the district, merge and consolidate districts, or the management and administration thereof, reduce the area of the district or dissolve the district if inactive,

all of the applicable provisions of this article providing for hearing, notice of hearing and approval by the public service commission shall apply. The commission shall at all times attempt to bring about the enlargement or merger of existing public service districts in order to provide increased services and to eliminate the need for creation of new public service districts in those areas which are not currently serviced by a public service district: Provided, however, That where two or more public service districts are consolidated pursuant to this section, any rate differentials may continue for the period of bonded indebtedness incurred prior to consolidation. The districts may not enter into any agreement, contract or covenant that infringes upon, impairs, abridges or usurps the duties, rights or powers of the county commission, as set forth in this article, or conflicts with any provision of this article.

(h) A list of all districts and their current board members shall be filed by the county commission with the secretary of state and the public service commission by the first day of July of each year. (1953, c. 147; 1965, c. 134; 1967, c. 105; 1975, c. 140; 1980, c. 60; 1981, c. 124; 1986, c. 81; 1995, c. 125.)

Editor's notes. — Concerning the reference in (a) to "the effective date of this section," this language was added by Acts 1986, c. 81, and became effective June 6, 1986.

Textbooks. — Instructions for Virginia and West Virginia, Publisher's Editorial Staff (Michie).

Constitutionality. — There is no unlawful delegation of legislative power to the county courts (now county commissions) of this State under this section in violation of W. Va. Const., art. V, § 1, and art. VI, § 1. State ex rel. McMillion v. Stahl, 141 W. Va. 233, 89 S.E.2d 693 (1955).

There is no unconstitutional delegation of judicial functions to the county court (now county commission) made by this section. State ex rel. McMillion v. Stahl, 141 W. Va. 233, 89 S.E.2d 693 (1955).

Authority of commission and voters. — (1) Only the county commission has the affirmative authority to create, enlarge or reduce a public service district; (2) in the absence of any action by a county commission, the requisite number of qualified voters in the affected geographic area may petition a county commission to create, enlarge or reduce a public service district, and, that upon the filing of such petition, a hearing shall be held thereon; (3) the county commission may, in its discretion, refuse to act in an affirmative manner upon such formal petition for creation, enlargement or reduction of such public service district, which action is not subject to protest or public referendum; (4) the county commission may, on its own motion or on the basis of such proper petition, enter an order creating, enlarging or reducing a public service district, which such action and order are subject to a hearing requiring proper notice, and a formal protest and

public referendum depending upon the number of qualified voters who protest such action. Op. Att'y Gen., Nov. 13, 1975.

Authority of court. — A county court (now county commission) has authority to add sewerage services to the facilities of a public service district which was created for the purpose of furnishing water services, under appropriate proceedings. Canyon Pub. Serv. Dist. v. Tasa Coal Co., 156 W. Va. 606, 195 S.E.2d 647 (1973).

Compliance. — The provisions of this section relating to the filing of the petition or motion of the county court (now county commission), the description of the territory to be embraced and like provisions are mandatory, but the use of the word "shall," in relation to the requirements for the posting and publication of notice and the time of setting the hearing are directory and require only substantial compliance. Canyon Pub. Serv. Dist. v. Tasa Coal Co., 156 W. Va. 606, 195 S.E.2d 647 (1973).

Merger or consolidation of districts. — This section authorizes either merger or consolidation of public service districts. Op. Att'y Gen., June 12, 1985, No. 9.

A merger or consolidation results in one corporation which, in the case of merger, will be the corporation designated by the commissioners as the surviving corporation, and with respect to a consolidation, will be a new corporate entity. Op. Att'y Gen., June 12, 1985, No. 9.

Overlapping districts. — Where there is no bond indebtedness outstanding to be paid by a public service district, the county commission creating a public service district may undertake to enlarge or reduce the areas of various overlapping districts or may even consolidate the overlapping districts into one district. Op. Att'y Gen., July 8, 1976.

Public corporation. — A public service

district is a public corporation and does not come within the constitutional inhibition requiring all corporations to be created by general law. *State ex rel. McMillion v. Stahl*, 141 W. Va. 233, 89 S.E.2d 693 (1955).

Referendum. — There is no authority for voters, by written protest or otherwise, to force a referendum upon the issue of whether or not a created public service district should be continued or abolished. 52 Op. Att'y Gen. 33 (1966).

"Shall apply with like effect," etc. — Because a protest against creation triggers a

referendum, the language "shall apply with like effect as if a district were being created" can mean only that a protest against enlargement or reduction likewise triggers a referendum. Op. Att'y Gen., Nov. 13, 1975.

Applied in *Berkeley County Pub. Serv. Sewer Dist. v. West Va. Pub. Serv. Comm'n*, 204 W. Va. 279, 512 S.E.2d 201 (1998).

Cited in *State v. Neary*, 179 W. Va. 115, 365 S.E.2d 395 (1987).

§ 16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.

From and after the date of the adoption of the order creating any public service district, it is a public corporation and political subdivision of the state, but without any power to levy or collect ad valorem taxes. Each district may acquire, own and hold property, both real and personal, in its corporate name, and may sue, may be sued, may adopt an official seal and may enter into contracts necessary or incidental to its purposes, including contracts with any city, incorporated town or other municipal corporation located within or without its boundaries for furnishing wholesale supply of water for the distribution system of the city, town or other municipal corporation, and contract for the operation, maintenance, servicing, repair and extension of any properties owned by it or for the operation and improvement or extension by the district of all or any part of the existing municipally owned public service properties of any city, incorporated town or other municipal corporation included within the district: Provided, That no contract shall extend beyond a maximum of forty years, but provisions may be included therein for a renewal or successive renewals thereof and shall conform to and comply with the rights of the holders of any outstanding bonds issued by the municipalities for the public service properties.

The powers of each public service district shall be vested in and exercised by a public service board consisting of not less than three members, who shall be persons residing within the district, who possess certain educational, business or work experience which will be conducive to operating a public service district. Each board member shall, within six months of taking office, successfully complete the training program to be established and administered by the public service commission in conjunction with the division of environmental protection and the bureau of public health. Board members shall not be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service, or in furnishing any supplies or materials to the district nor shall a former board member be hired by the district in any capacity within a minimum of twelve months after board member's term has expired or such board member has resigned from the district board. The members shall be appointed in the following manner:

Each city, incorporated town or other municipal corporation having a population of more than three thousand but less than eighteen thousand is

entitled to appoint one member of the board, and each city, incorporated town or other municipal corporation having a population in excess of eighteen thousand shall be entitled to appoint one additional member of the board for each additional eighteen thousand population. The members of the board representing such cities, incorporated towns or other municipal corporations shall be residents thereof and shall be appointed by a resolution of the governing bodies thereof and upon the filing of a certified copy or copies of the resolution or resolutions in the office of the clerk of the county commission which entered the order creating the district, the persons so appointed become members of the board without any further act or proceedings. If the number of members of the board so appointed by the governing bodies of cities, incorporated towns or other municipal corporations included in the district equals or exceeds three, then no further members shall be appointed to the board and the members so appointed are the board of the district except in cases of merger or consolidation where the number of board members may equal five.

If no city, incorporated town or other municipal corporation having a population of more than three thousand is included within the district, then the county commission which entered the order creating the district shall appoint three members of the board, who are persons residing within the district and residing within the state of West Virginia, which three members become members of the board of the district without any further act or proceedings except in cases of merger or consolidation where the number of board members may equal five.

If the number of members of the board appointed by the governing bodies of cities, incorporated towns or other municipal corporations included within the district is less than three, then the county commission which entered the order creating the district shall appoint such additional member or members of the board, who are persons residing within the district, as is necessary to make the number of members of the board equal three except in cases of merger or consolidation where the number of board members may equal five, and the member or members appointed by the governing bodies of the cities, incorporated towns or other municipal corporations included within the district and the additional member or members appointed by the county commission as aforesaid, are the board of the district. A person may serve as a member of the board in one or more public service districts.

The population of any city, incorporated town or other municipal corporation, for the purpose of determining the number of members of the board, if any, to be appointed by the governing body or bodies thereof, is the population stated for such city, incorporated town or other municipal corporation in the last official federal census.

Notwithstanding any provision of this code to the contrary, whenever a district is consolidated or merged pursuant to section two [§ 16-13A-2] of this article, the terms of office of the existing board members shall end on the effective date of the merger or consolidation. The county commission shall appoint a new board according to rules promulgated by the public service commission. Whenever districts are consolidated or merged no provision of this code prohibits the expansion of membership on the new board to five.

The respective terms of office of the members of the first board shall be fixed by the county commission and shall be as equally divided as may be, that is approximately one third of the members for a term of two years, a like number for a term of four years, the term of the remaining member or members for six years, from the first day of the month during which the appointments are made. The first members of the board appointed as aforesaid shall meet at the office of the clerk of the county commission which entered the order creating the district as soon as practicable after the appointments and shall qualify by taking an oath of office: Provided, That any member or members of the board may be removed from their respective office as provided in section three-a [§ 16-13A-3a] of this article.

Any vacancy shall be filled for the unexpired term within thirty days, otherwise successor members of the board shall be appointed for terms of six years and the terms of office shall continue until successors have been appointed and qualified. All successor members shall be appointed in the same manner as the member succeeded was appointed. The district shall provide to the public service commission, within thirty days of the appointment, the following information: The new board member's name, home address, home and office phone numbers, date of appointment, length of term, who the new member replaces and if the new appointee has previously served on the board. The public service commission shall notify each new board member of the legal obligation to attend training as prescribed in this section.

The board shall organize within thirty days following the first appointments and annually thereafter at its first meeting after the first day of January of each year by selecting one of its members to serve as chair and by appointing a secretary and a treasurer who need not be members of the board. The secretary shall keep a record of all proceedings of the board which shall be available for inspection as other public records. Duplicate records shall be filed with the county commission and shall include the minutes of all board meetings. The treasurer is lawful custodian of all funds of the public service district and shall pay same out on orders authorized or approved by the board. The secretary and treasurer shall perform other duties appertaining to the affairs of the district and shall receive salaries as shall be prescribed by the board. The treasurer shall furnish bond in an amount to be fixed by the board for the use and benefit of the district.

The members of the board, and the chair, secretary and treasurer thereof, shall make available to the county commission, at all times, all of its books and records pertaining to the district's operation, finances and affairs, for inspection and audit. The board shall meet at least monthly. (1953, c. 147; 1965, c. 134; 1971, c. 72; 1981, c. 124; 1983, c. 166; 1986, c. 81; 1994, c. 61; 1997, c. 159.)

Textbooks. — Instructions for Virginia and West Virginia. Publisher's Editorial Staff (Michie).

W. Va. Law Review. — Fisher, "The Scope of Title Examination in West Virginia: Can Reasonable Minds Differ?" 98 W. Va. L. Rev. 449 (1996).

Authority of districts. — Public service

districts are agents of the county commission by which they were created, having no authority other than that expressly set out in this article. Op. Att'y Gen., July 8, 1976.

Compensation for additional duties. — Board members of a public service district could not be compensated for performing the duties of treasurer and/or secretary, or for reading

meters for the public service district. Op. Att'y Gen., July 14, 1988, No. 2.

Exemptions. — Public service districts of West Virginia are political subdivisions of the State, and as such, they are specifically, by express statute, exempted from the duty of paying registration fees (provided by § 17A-10-8), the privilege tax (imposed by § 17A-3-4), and the certificate of title charge (required by § 17A-3-4). 49 Op. Att'y Gen. 131 (1961).

Furnishing water to another state. — A public service district may furnish water wholesale in bulk quantities to a municipal corporation in another state. 51 Op. Att'y Gen. 739 (1966).

Applied in *McCloud v. Salt Rock Water Pub. Serv. Dist.*, 207 W. Va. 453, 533 S.E.2d 679 (2000).

Cited in *State v. Neary*, 179 W. Va. 115, 365 S.E.2d 395 (1987).

§ 16-13A-3a. Removal of members of public service board.

The county commission or the public service commission or any other appointive body creating or establishing a public service district under the provisions of this article, or any group of five percent or more of the customers of a public service district, may petition the circuit court of the county in which the district maintains its principal office for the removal of any member of the governing board thereof for consistent violations of any provisions of this article, for reasonable cause which includes, but is not limited to, a continued failure to attend meetings of the board, failure to diligently pursue the objectives for which the district was created, or failure to perform any other duty either prescribed by law or required by a final order of the public service commission or for any malfeasance in public office. Any board member charged with a violation under this section who offers a successful defense against such charges shall be reimbursed for the reasonable costs of such defense from district revenues. Such costs shall be considered as costs associated with rate determination by the public service district and the public service commission. If the circuit court judge hearing the petition for removal finds that the charges are frivolous in nature, the judge may assess all or part of the court costs, plus the reasonable costs associated with the board member's defense, against the party or parties who petitioned the court for the board member's removal. (1963, c. 75; 1971, c. 72; 1981, c. 124; 1986, c. 81.)

Textbooks. — Instructions for Virginia and West Virginia, Publisher's Editorial Staff (Michie).

Quoted in *State v. Neary*, 179 W. Va. 115, 365 S.E.2d 395 (1987).

§ 16-13A-4. Board chairman; members' compensation; procedure; district name.

(a) The chairman shall preside at all meetings of the board and may vote as any other member of the board. If the chairman is absent from any meeting, the remaining members may select a temporary chairman and if the member selected as chairman resigns as such or ceases for any reason to be a member of the board, the board shall select one of its members as chairman to serve until the next annual organization meeting.

(b) Salaries of the board members are:

(1) For districts with fewer than six hundred customers, up to seventy-five dollars per attendance at regular monthly meetings and fifty dollars per

attendance at additional special meetings, total salary not to exceed fifteen hundred dollars per annum;

(2) For districts with six hundred customers or more but fewer than two thousand customers, up to one hundred dollars per attendance at regular monthly meetings and seventy-five dollars per attendance at additional special meetings, total salary not to exceed two thousand five hundred fifty dollars per annum;

(3) For districts with two thousand customers or more, up to one hundred twenty-five dollars per attendance at regular monthly meetings and seventy-five dollars per attendance at additional special meetings, total salary not to exceed three thousand seven hundred fifty dollars per annum; and

(4) For districts with four thousand or more customers, up to one hundred fifty dollars per attendance at regular monthly meetings and one hundred dollars per attendance at additional special meetings, total salary not to exceed five thousand four hundred dollars per annum.

The public service district shall certify the number of customers served to the public service commission beginning on the first day of July, one thousand nine hundred eighty-six, and continue each fiscal year thereafter.

(c) Public service districts selling water to other water utilities for resale may adopt the following salaries for its board members:

(1) For districts with annual revenues of less than fifty thousand dollars, up to seventy-five dollars per attendance at regular monthly meetings and fifty dollars per attendance at additional special meetings, total salary not to exceed fifteen hundred dollars per annum;

(2) For districts with annual revenues of fifty thousand dollars or more, but less than two hundred fifty thousand dollars, up to one hundred dollars per attendance at regular monthly meetings and seventy-five dollars per attendance at special meetings, total salary not to exceed two thousand five hundred fifty dollars per annum;

(3) For districts with annual revenues of two hundred fifty thousand dollars or more, but less than five hundred thousand dollars, up to one hundred twenty-five dollars per attendance at regular monthly meetings and seventy-five dollars per attendance at additional special meetings, total salary not to exceed three thousand seven hundred fifty dollars per annum; and

(4) For districts with annual revenues of five hundred thousand dollars or more, up to one hundred fifty dollars per attendance at regular monthly meetings and one hundred dollars per attendance at additional special meetings, total salary not to exceed five thousand four hundred dollars per annum.

The public service district shall certify the number of customers served and its annual revenue to the public service commission beginning on the first day of July, two thousand, and continue each fiscal year thereafter.

(d) Board members may be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties as provided for by the rules of the board.

(e) The board shall by resolution determine its own rules of procedure, fix the time and place of its meetings and the manner in which special meetings

may be called. Public notice of meetings shall be given in accordance with section three [§ 6-9A-3], article nine-a, chapter six of this code. Emergency meetings may be called as provided for by said section. A majority of the members constituting the board also constitute a quorum to do business.

(f) The members of the board are not personally liable or responsible for any obligations of the district or the board, but are answerable only for willful misconduct in the performance of their duties. At any time prior to the issuance of bonds as hereinafter provided, the board may by resolution change the official or corporate name of the public service district and the change is effective from the filing of an authenticated copy of such resolution with the clerk of the county commission of each county in which the territory embraced within such district or any part thereof is located and with the public service commission. The official name of any district created under the provisions of this article may contain the name or names of any city, incorporated town or other municipal corporation included therein or the name of any county or counties in which it is located. (1953, c. 147; 1981, c. 124; 1986, c. 81; 1997, c. 159; 2000, c. 199.)

Effect of amendment of 2000. — Acts 2000, c. 199, effective June 9, 2000, rewrote the section.

Compensation for performing additional duties. — Board members of a public

service district could not be compensated for performing the duties of treasurer and/or secretary, or for reading meters for the public service district. Op. Att'y Gen., July 14, 1988, No. 2.

§ 16-13A-5. General manager of board.

The board may employ a general manager to serve a term of not more than five years and until his successor is employed, and his compensation shall be fixed by resolution of the board. Such general manager shall devote all or the required portion of his time to the affairs of the district and may employ, discharge and fix the compensation of all employees of the district, except as in this article otherwise provided, and he shall perform and exercise such other powers and duties as may be conferred upon him by the board.

Such general manager shall be chosen without regard to his political affiliations and upon the sole basis of his administrative and technical qualifications to manage public service properties and affairs of the district and he may be discharged only upon the affirmative vote of two thirds of the board. Such general manager need not be a resident of the district at the time he is chosen. Such general manager may not be a member of the board but shall be an employee of the board.

The board of any public service district which purchases water or sewer service from a municipal water or sewer system or another public service district may, as an alternative to hiring its own general manager, elect to permit the general manager of the municipal water or sewer system or public service district from which such water or sewer service is purchased provide professional management to the district, if the appropriate municipality or public service board agrees to provide such assistance. The general manager shall receive reasonable compensation for such service. (1953, c. 147; 1981, c. 124; 1986, c. 81.)

§ 16-13A-6. Employees of board.

The board may in its discretion from time to time by resolution passed by a majority vote provide for the employment of an attorney, fiscal agent, one or more engineers and such other employees as the board may determine necessary and expedient. The board shall in and by such resolution fix the term of employment and compensation and prescribe the duties to be performed by such employees. (1953, c. 147; 1981, c. 124.)

§ 16-13A-7. Acquisition and operation of district properties.

The board of such districts shall have the supervision and control of all public service properties acquired or constructed by the district, and shall have the power, and it shall be its duty, to maintain, operate, extend and improve the same. All contracts involving the expenditure by the district of more than fifteen thousand dollars for construction work or for the purchase of equipment and improvements, extensions or replacements, shall be entered into only after notice inviting bids shall have been published as a Class I legal advertisement in compliance with the provision of article three [§§ 59-3-1 et seq.], chapter fifty-nine of this code, and the publication area for such publication shall be as specified in section two [§ 16-13A-2] of this article in the county or counties in which the district is located. The publication shall not be less than ten days prior to the making of any such contract. To the extent allowed by law, in-state contractors shall be given first priority in awarding public service district contracts. It shall be the duty of the board to ensure that local in-state labor shall be utilized to the greatest extent possible when hiring laborers for public service district construction or maintenance repair jobs. It shall further be the duty of the board to encourage contractors to use American made products in their construction to the extent possible. Any obligations incurred of any kind or character shall not in any event constitute or be deemed an indebtedness within the meaning of any of the provisions or limitations of the constitution, but all such obligations shall be payable solely and only out of revenues derived from the operation of the public service properties of the district or from proceeds of bonds issued as hereinafter provided. No continuing contract for the purchase of materials or supplies or for furnishing the district with electrical energy or power shall be entered into for a longer period than fifteen years. (1953, c. 147; 1967, c. 105; 1981, c. 124; 1982, c. 24; 1986, c. 81; 1997, c. 159.)

§ 16-13A-8. Acquisition and purchase of public service properties; right of eminent domain; extraterritorial powers.

The board may acquire any publicly or privately owned public service properties located within the boundaries of the district regardless of whether or not all or any part of such properties are located within the corporate limits

of any city, incorporated town or other municipal corporation included within the district and may purchase and acquire all rights and franchises and any and all property within or outside the district necessary or incidental to the purpose of the district.

The board may construct any public service properties within or outside the district necessary or incidental to its purposes and each such district may acquire, construct, maintain and operate any such public service properties within the corporate limits of any city, incorporated town or other municipal corporation included within the district or in any unincorporated territory within ten miles of the territorial boundaries of the district: Provided, That if any incorporated city, town or other municipal corporation included within the district owns and operates either water facilities, sewer facilities or gas facilities or all of these, then the district may not acquire, construct, establish, improve or extend any public service properties of the same kind within such city, incorporated towns or other municipal corporations or the adjacent unincorporated territory served by such cities, incorporated towns or other municipal corporations, except upon the approval of the public service commission, the consent of such cities, incorporated towns or other municipal corporations and in conformity and compliance with the rights of the holders of any revenue bonds or obligations theretofore issued by such cities, incorporated towns or other municipal corporations then outstanding and in accordance with the ordinance, resolution or other proceedings which authorize the issuance of such revenue bonds or obligations.

Whenever such district has constructed, acquired or established water facilities, sewer facilities or gas facilities for water, sewer or gas services within any city, incorporated town or other municipal corporation included within a district, then such city, incorporated town or other municipal corporation may not thereafter construct, acquire or establish any facilities of the same kind within such city, incorporated town or other municipal corporation without the consent of such district.

For the purpose of acquiring any public service properties or lands, rights or easements deemed necessary or incidental to the purposes of the district, each such district has the right of eminent domain to the same extent and to be exercised in the same manner as now or hereafter provided by law for such right of eminent domain by cities, incorporated towns and other municipal corporations: Provided, That such board may not acquire all or any substantial part of a privately owned waterworks system unless and until authorized so to do by the public service commission of West Virginia, and that this section shall not be construed to authorize any district to acquire through condemnation proceedings either in whole or substantial part an existing privately owned waterworks plant or system or gas facilities located in or furnishing water or gas service within such district or extensions made or to be made by it in territory contiguous to such existing plant or system, nor may any such board construct or extend its public service properties to supply its services into areas served by or in competition with existing waterworks or gas facilities or extensions made or to be made in territory contiguous to such existing plant or system by the owner thereof. (1953, c. 147; 1980, c. 60; 1981, c. 124.)

Eminent domain. — The grant of power of eminent domain to public service districts by this section is valid. *State ex rel. McMillion v. Stahl*, 141 W. Va. 233, 89 S.E.2d 693 (1955).

If a facility creates a nuisance this harm is simply an element of just compensation in an eminent domain proceeding. *Sexton v. Public Serv. Comm'n*, 188 W. Va. 305, 423 S.E.2d 914 (1992).

Public service commission, in the absence of specific statutory authority, is not empowered to determine whether particular property interests acquired or to be acquired by a utility are compensable in an eminent domain action, or to render any type of monetary judgment for such property interests. Affixing the value of the property taken is the function of the trier of fact in an eminent domain proceeding. *Sexton v. Public Serv. Comm'n*, 188 W. Va. 305, 423 S.E.2d 914 (1992).

Superior right of municipality to extend

public services. — If a tract of real estate located within a public service district has been annexed into a municipality, then, as between the municipality and the public service district, the municipality has the superior right under this section to extend public services, such as water and/or sewer service, which were not being previously furnished to the tract by the public service district. *Berkeley County Pub. Serv. Sewer Dist. v. West Va. Pub. Serv. Comm'n*, 204 W. Va. 279, 512 S.E.2d 201 (1998).

When consent of municipality needed. — Where municipality has superior right to extend social services, a public service district would need the consent of the municipality and the public service commission in order to provide such services. *Berkeley County Pub. Serv. Sewer Dist. v. West Va. Pub. Serv. Comm'n*, 204 W. Va. 279, 512 S.E.2d 201 (1998).

Cited in 45 Op. Att'y Gen. 506 (1953).

§ 16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.

The board may make, enact and enforce all needful rules and regulations in connection with the acquisition, construction, improvement, extension, management, maintenance, operation, care, protection and the use of any public service properties owned or controlled by the district, and the board shall establish rates and charges for the services and facilities it furnishes, which shall be sufficient at all times, notwithstanding the provisions of any other law or laws, to pay the cost of maintenance, operation and depreciation of such public service properties and principal of and interest on all bonds issued, other obligations incurred under the provisions of this article and all reserve or other payments provided for in the proceedings which authorized the issuance of any bonds hereunder. The schedule of such rates and charges may be based upon either (a) the consumption of water or gas on premises connected with such facilities, taking into consideration domestic, commercial, industrial and public use of water and gas; or (b) the number and kind of fixtures connected with such facilities located on the various premises; or (c) the number of persons served by such facilities; or (d) any combination thereof; or (e) may be determined on any other basis or classification which the board may determine to be fair and reasonable, taking into consideration the location of the premises served and the nature and extent of the services and facilities furnished. Where water, sewer and gas services are all furnished to any premises, the schedule of charges may be billed as a single amount for the aggregate thereof. The board shall require all users of services and facilities furnished by the district to designate on every application for service whether the applicant is a tenant or an owner of the premises to be served. If the applicant is a tenant, he or she shall state the name and address of the owner or owners of the premises to be served by the district. All new applicants for service shall

deposit a minimum of fifty dollars with the district to secure the payment of service rates and charges in the event they become delinquent as provided in this section. In any case where a deposit is forfeited to pay service rates and charges which were delinquent at the time of disconnection or termination of service, no reconnection or reinstatement of service may be made by the district until another minimum deposit of fifty dollars has been remitted to the district. Whenever any rates, rentals or charges for services or facilities furnished remain unpaid for a period of thirty days after the same become due and payable, the property and the owner thereof, as well as the user of the services and facilities provided are delinquent and the owner, user and property are liable at law until such time as all such rates and charges are fully paid: Provided, That the property owner shall be given notice of any said delinquency by certified mail, return receipt requested. The board may, under reasonable rules promulgated by the public service commission, shut off and discontinue water or gas services to all delinquent users of either water or gas facilities, or both: Provided, however, That upon written request of the owner or owners of the premises, the board shall shut off and discontinue water and gas services where any rates, rentals, or charges for services or facilities remain unpaid by the user of the premises for a period of sixty days after the same became due and payable.

In the event that any publicly or privately owned utility, city, incorporated town, other municipal corporation or other public service district included within the district owns and operates separately either water facilities or sewer facilities, and the district owns and operates the other kind of facilities, either water or sewer, as the case may be, then the district and such publicly or privately owned utility, city, incorporated town or other municipal corporation or other public service district shall covenant and contract with each other to shut off and discontinue the supplying of water service for the nonpayment of sewer service fees and charges: Provided, That any contracts entered into by a public service district pursuant to this section shall be submitted to the public service commission for approval. Any public service district providing water and sewer service to its customers has the right to terminate water service for delinquency in payment of either water or sewer bills. Where one public service district is providing sewer service and another public service district or a municipality included within the boundaries of the sewer district is providing water service, and the district providing sewer service experiences a delinquency in payment, the district or the municipality included within the boundaries of the sewer district that is providing water service, upon the request of the district providing sewer service to the delinquent account, shall terminate its water service to the customer having the delinquent sewer account: Provided, however, That any termination of water service must comply with all rules and orders of the public service commission.

Any district furnishing sewer facilities within the district may require, or may by petition to the circuit court of the county in which the property is located, compel or may require the bureau of public health to compel all owners, tenants or occupants of any houses, dwellings and buildings located near any such sewer facilities, where sewage will flow by gravity or be

transported by such other methods approved by the bureau of public health including, but not limited to, vacuum and pressure systems, approved under the provisions of section nine [§ 16-1-9], article one, chapter sixteen of this code, from such houses, dwellings or buildings into such sewer facilities, to connect with and use such sewer facilities, and to cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such houses, dwellings and buildings where there is such gravity flow or transportation by such other methods approved by the bureau of public health including, but not limited to, vacuum and pressure systems, approved under the provisions of section nine, article one, chapter sixteen of this code, and such houses, dwellings and buildings can be adequately served by the sewer facilities of the district, and it is hereby found, determined and declared that the mandatory use of such sewer facilities provided for in this paragraph is necessary and essential for the health and welfare of the inhabitants and residents of such districts and of the state: Provided, That if the public service district determines that the property owner must connect with the sewer facilities even when sewage from such dwellings may not flow to the main line by gravity and the property owner must incur costs for any changes in the existing dwellings' exterior plumbing in order to connect to the main sewer line, the public service district board shall authorize the district to pay all reasonable costs for such changes in the exterior plumbing, including, but not limited to, installation, operation, maintenance and purchase of a pump, or any other method approved by the bureau of public health; maintenance and operation costs for such extra installation should be reflected in the users charge for approval of the public service commission. The circuit court shall adjudicate the merits of such petition by summary hearing to be held not later than thirty days after service of petition to the appropriate owners, tenants or occupants.

Whenever any district has made available sewer facilities to any owner, tenant or occupant of any house, dwelling or building located near such sewer facility, and the engineer for the district has certified that such sewer facilities are available to and are adequate to serve such owner, tenant or occupant, and sewage will flow by gravity or be transported by such other methods approved by the bureau of public health from such house, dwelling or building into such sewer facilities, the district may charge, and such owner, tenant or occupant shall pay the rates and charges for services established under this article only after thirty-day notice of the availability of the facilities has been received by the owner.

All delinquent fees, rates and charges of the district for either water facilities, sewer facilities or gas facilities are liens on the premises served of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes. In addition to the other remedies provided in this section, public service districts are hereby granted a deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an action in magistrate court for the collection of delinquent water, sewer or gas bills. If the district collects the delinquent account, plus reasonable costs, from its customer or other responsible party, the district shall pay to the magistrate the

normal filing fee and reasonable costs which were previously deferred. In addition, each public service district may exchange with other public service districts a list of delinquent accounts.

Anything in this section to the contrary notwithstanding, any establishment, as defined in section three [§ 22-11-3], article eleven, chapter twenty-two, now or hereafter operating its own sewage disposal system pursuant to a permit issued by the division of environmental protection, as prescribed by section eleven [§ 22-11-11], article eleven, chapter twenty-two of this code, is exempt from the provisions of this section. (1953, c. 147; 1965, c. 134; 1980, c. 60; 1981, c. 124; 1986, c. 81; 1989, c. 174; 1994, c. 61.)

W. Va. Law Review. — Fisher, "The Scope of Title Examination in West Virginia: Can Reasonable Minds Differ?," 98 W. Va. L. Rev. 449 (1996).

Abandonment of private systems. — Where a public service district requires a property owner, tenant, or occupant to connect onto its sewer system and to abandon a private sewer system located on the property, such person cannot recover from the public service district the value of the private system on the ground that such abandonment constitutes a taking of private property without just compensation within the meaning of W. Va. Const., art. III, § 9. *Kingmill Valley Pub. Serv. Dist. v. Riverview Estates Mobile Home Park*, 182 W. Va. 116, 386 S.E.2d 483 (1989).

Buffer-zone requirements. — Public Service Commission did not err in finding that the proposed sewage lagoons site satisfied the buffer-zone requirements. *Sexton v. Public Serv. Comm'n*, 188 W. Va. 305, 423 S.E.2d 914 (1992).

Duty to pay. — Owners, tenants, or occupants have a duty under this section to pay rates and charges for the district sewer facilities from and after the date of receipt of notice (now 30 days after receipt) that such facilities are available. *Rhodes v. Malden Pub. Serv. Dist.*,

171 W. Va. 645, 301 S.E.2d 601 (1983) (construing this section prior to 1980 and 1981 amendments).

Liens. — The provision that delinquent fixed rates and charges for services rendered by a public service district shall be a lien on the premises served of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes, does not deprive the owners of their property without due process of law. *State ex rel. McMillion v. Stahl*, 141 W. Va. 233, 89 S.E.2d 693 (1955).

Public service district liens created and enforceable under this section are subject to the recordation requirements of § 38-10C-1 so that such liens must be docketed to be enforceable against a purchaser of the property for valuable consideration, without notice. *McClung Invs., Inc. v. Green Valley Community Pub. Serv. Dist.*, 199 W. Va. 490, 485 S.E.2d 434 (1997).

Sewer connection requirements. — The boards of public service districts have no authority to require potential users who live outside the boundaries of the districts, but within the 10-mile limit, to hook onto the district's sewer facilities. *Op. Att'y Gen.*, July 8, 1976.

Quoted in *State ex rel. Water Dev. Auth. v. Northern Wayne County Pub. Serv. Dist.*, 195 W. Va. 135, 464 S.E.2d 777 (1995).

§ 16-13A-9a. Limitations with respect to foreclosure.

No public service district shall foreclose upon the premises served by such district for delinquent fees, rates or charges for which a lien is authorized by sections nine or nineteen [§§ 16-13A-9 or 16-13A-19] of this article except through the bringing and maintenance of a civil action for such purpose brought in the circuit court of the county wherein the district lies. In every such action, the court shall be required to make a finding based upon the evidence and facts presented that the district prior to the bringing of such action had exhausted all other remedies for the collection of debts with respect to such delinquencies. In no event shall foreclosure procedures be instituted by any such district or on its behalf unless such delinquency had been in existence or continued for a period of two years from the date of the first such delinquency for which foreclosure is being sought. (1982, c. 74.)

§ 16-13A-10. Budget.

The board shall establish the beginning and ending of its fiscal year, which period shall constitute its budget year, and at least thirty days prior to the beginning of the first full fiscal year after the creation of the district and annually thereafter the general manager shall prepare and submit to the board a tentative budget which shall include all operation and maintenance expenses, payments to a capital replacement account and bond payment schedules for the ensuing fiscal year. Such tentative budget shall be considered by the board, and, subject to any revisions or amendments that may be determined by the board, shall be adopted as the budget for the ensuing fiscal year. Upon adoption of the budget, a copy of the budget shall be forwarded to the county commission. No expenditures for operation and maintenance expenses in excess of the budget shall be made during such fiscal year unless unanimously authorized and directed by the board. (1953, c. 147; 1981, c. 124.)

Textbooks. — Instructions for Virginia and West Virginia, Publisher's Editorial Staff (Michie).

§ 16-13A-11. Accounts; audit.

The general manager, under direction of the board, shall install and maintain a proper system of accounts, in accordance with all rules, regulations or orders pertaining thereto by the public service commission, showing receipts from operation and application of the same, and the board shall at least once a year cause such accounts to be properly audited: Provided, That such audit may be any audit by an independent public accountant completed within one year of the time required for the submission of the report: Provided, however, That if the district is required to have its books, records and accounts audited annually by an independent certified public accountant as a result of any covenant in any board resolution or bond instrument, a copy of such audit may be submitted in satisfaction of the requirements of this section, and is hereby found, declared and determined to be sufficient to satisfy the requirements of article nine (§§ 6-9-1 et seq.), chapter six of this code pertaining to the annual audit report by the state tax commission. A copy of the audit shall be forwarded within thirty days of submission to the county commission and to the public service commission.

The treasurer of each public service district shall keep and preserve all financial records of the public service district for ten years, and shall at all times have such records readily available for public inspection. At the end of his term of office, the treasurer of each public service district shall promptly deliver all financial records of the public service district to his successor in office. Any treasurer of a public service district who knowingly or willfully violates any provision of this section is guilty of a misdemeanor, and shall be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned in the county jail not more than ten days, or both. (1953, c. 147; 1981, c. 124; 1986, c. 81.)

Textbooks. — Instructions for Virginia and West Virginia. Publisher's Editorial Staff (Michie).

§ 16-13A-12. Disbursement of district funds.

No money may be paid out by a district except upon an order signed by the chairman and secretary of such board, or such other person or persons authorized by the chairman or secretary, as the case may be, to sign such orders on their behalf. Each order for the payment of money shall specify the purposes for which the amount thereof is to be paid, with sufficient clearness to indicate the purpose for which the order is issued, and there shall be endorsed thereon the name of the particular fund out of which it is payable and it shall be payable from the fund constituted for such purpose, and no other. All such orders shall be reflected in the minutes of the next meeting of the board. (1953, c. 147; 1981, c. 124.)

§ 16-13A-13. Revenue bonds.

For constructing or acquiring any public service properties for the authorized purposes of the district, or necessary or incidental thereto, and for constructing improvements and extensions thereto, and also for reimbursing or paying the costs and expenses of creating the district, the board of any such district is hereby authorized to borrow money from time to time and in evidence thereof issue the bonds of such district, payable solely from the revenues derived from the operation of the public service properties under control of the district. Such bonds may be issued in one or more series, may bear such date or dates, may mature at such time or times not exceeding forty years from their respective dates, may bear interest at such rate or rates not exceeding eighteen percent per annum payable at such times, may be in such form, may carry such registration privileges, may be executed in such manner, may be payable at such place or places, may be subject to such terms of redemption with or without premium, may be declared or become due before maturity date thereof, may be authenticated in any manner, and upon compliance with such conditions, and may contain such terms and covenants as may be provided by resolution or resolutions of the board. Notwithstanding the form or tenor thereof, and in the absence of any express recital on the face thereof, that the bond is nonnegotiable, all such bonds shall be, and shall be treated as, negotiable instruments for all purposes. Bonds bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding for all purposes notwithstanding that before the delivery thereof any or all of the persons whose signatures appear thereon shall have ceased to be such officers. Notwithstanding the requirements or provisions of any other law, any such bonds may be negotiated or sold in such manner and at such time or times as is found by the board to be most advantageous, and all such bonds may be sold at such price that the interest cost of the proceeds therefrom does not exceed nineteen percent per annum, based on the average maturity of such bonds and computed according to standard tables of bond values. Any resolu-

tion or resolutions providing for the issuance of such bonds may contain such covenants and restrictions upon the issuance of additional bonds thereafter as may be deemed necessary or advisable for the assurance of the payment of the bonds thereby authorized. (1953, c. 147; 1970, cc. 11, 12; 1970, 1st Ex. Sess., c. 2; 1980, c. 33; 1981, 1st Ex. Sess., c. 2; 1989, c. 174.)

Cross references. — Procedure for borrowing and issuing bonds. § 16-13A-25.

§ 16-13A-14. Items included in cost of properties.

The cost of any public service properties acquired under the provisions of this article shall be deemed to include the cost of the acquisition or construction thereof, the cost of all property rights, easements and franchises deemed necessary or convenient therefor and for the improvements and extensions thereto; interest upon bonds prior to and during construction or acquisition and for six months after completion of construction or of acquisition of the improvements and extensions; engineering, fiscal agents and legal expenses; expenses for estimates of cost and of revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, and such other expenses as may be necessary or incident to the financing herein authorized, and the construction or acquisition of the properties and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof. (1953, c. 147.)

§ 16-13A-15. Bonds may be secured by trust indenture.

In the discretion and at the option of the board such bonds may be secured by a trust indenture by and between the district and a corporate trustee, which may be a trust company or bank having powers of a trust company within or without the State of West Virginia, but no such trust indenture shall convey, mortgage or create any lien upon the public service properties or any part thereof. The resolution authorizing the bonds and fixing the details thereof may provide that such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the district and the members of its board and officers in relation to the construction or acquisition of public service properties and the improvement, extension, operation, repair, maintenance and insurance thereof, and the custody, safeguarding and application of all moneys, and may provide that all or any part of the construction work shall be contracted for, constructed and paid for, under the supervision and approval of consulting engineers employed or designated by the board and satisfactory to the original bond purchasers, their successors, assignees or nominees, who may be given the right to require the security given by contractors and by any depository of the proceeds of bonds or revenues of the public service properties or other money pertaining thereto be satisfactory to such purchasers, their successors, assignees or

nominees. Such indenture may set forth the rights and remedies of the bondholders and such trustee. (1953, c. 147.)

§ 16-13A-16. Sinking fund for revenue bonds.

At or before the time of the issuance of any bonds under this article the board shall by resolution or in the trust indenture provide for the creation of a sinking fund and for monthly payments into such fund from the revenues of the public service properties operated by the district such sums in excess of the cost of maintenance and operation of such properties as will be sufficient to pay the accruing interest and retire the bonds at or before the time each will respectively become due and to establish and maintain reserves therefor. All sums which are or should be, in accordance with such provisions, paid into such sinking fund shall be used solely for payment of interest and for the retirement of such bonds at or prior to maturity as may be provided or required by such resolutions. (1953, c. 147.)

§ 16-13A-17. Collection, etc., of revenues and enforcement of covenants; default; suit, etc., by bondholder or trustee to compel performance of duties; appointment and powers of receiver.

The board of any such district shall have power to insert enforceable provisions in any resolution authorizing the issuance of bonds relating to the collection, custody and application of revenues of the district from the operation of the public service properties under its control and to the enforcement of the covenants and undertakings of the district. In the event there shall be default in the sinking fund provisions aforesaid or in the payment of the principal or interest on any of such bonds or, in the event the district or its board or any of its officers, agents or employees, shall fail or refuse to comply with the provisions of this article, or shall default in any covenant or agreement made with respect to the issuance of such bonds or offered as security therefor, then any holder or holders of such bonds and any such trustee under the trust indenture, if there be one, shall have the right by suit, action, mandamus or other proceeding instituted in the circuit court for the county or any of the counties wherein the district extends, or in any other court of competent jurisdiction, to enforce and compel performance of all duties required by this article or undertaken by the district in connection with the issuance of such bonds, and upon application of any such holder or holders, or such trustee, such court shall, upon proof of such defaults, appoint a receiver for the affairs of the district and its properties, which receiver so appointed shall forthwith directly, or by his agents and attorneys, enter into and upon and take possession of the affairs of the district and each and every part thereof, and hold, use, operate, manage and control the same, and in the name of the district exercise all of the rights and powers of such district as shall be deemed expedient, and such receiver shall have power and authority to collect and receive all revenues and apply same in such manner as the court shall

direct. Whenever the default causing the appointment of such receiver shall have been cleared and fully discharged and all other defaults shall have been cured, the court may in its discretion and after such notice and hearing as it deems reasonable and proper direct the receiver to surrender possession of the affairs of the district to its board. Such receiver so appointed shall have no power to sell, assign, mortgage, or otherwise dispose of any assets of the district except as hereinbefore provided. (1953, c. 147.)

Rules of Civil Procedure. — As to abolition of the procedural distinctions between law and equity, see Rule 2.

As to receivers, see Rule 66.

As to application of rules to writ of mandamus, see Rule 81(a)(5).

As to effect of rules on jurisdiction and venue, see Rule 82.

Mandamus. — Mandamus is a proper remedy to be pursued by the holder of a municipal revenue bond to require a municipal corporation to comply with rate covenants in its rev-

enue bonds. *State ex rel. Allstate Ins. Co. v. Union Pub. Serv. Dist.*, 151 W. Va. 207, 151 S.E.2d 102 (1966).

Under this section, any holder of the bonds of the Union public service district shall have the right by mandamus to enforce and compel the performance of all the duties required by statute or undertaken by the district in connection with the issuance of bonds by such district. *State ex rel. Allstate Ins. Co. v. Union Pub. Serv. Dist.*, 151 W. Va. 207, 151 S.E.2d 102 (1966).

§ 16-13A-18. Operating contracts.

The board may enter into contracts or agreements with any persons, firms or corporations for the operation and management of the public service properties within the district, or any part thereof, for such period of time and under such terms and conditions as shall be agreed upon between the board and such persons, firms or corporations. The board shall have power to provide in the resolution authorizing the issuance of bonds, or in any trust indenture securing such bonds, that such contracts or agreements shall be valid and binding upon the district as long as any of said bonds, or interest thereon, are outstanding and unpaid. (1953, c. 147.)

§ 16-13A-18a. Sale, lease or rental of water, sewer or gas system by district; distribution of proceeds.

In any case where a public service district owns a water, sewer or gas system, and a majority of not less than sixty percent of the members of the public service board thereof deem it for the best interests of the district to sell, lease or rent such water, sewer or gas system to any municipality or privately-owned water, sewer or gas system, or to any water, sewer or gas system owned by an adjacent public service district, the board may so sell, lease or rent such water, sewer or gas system upon such terms and conditions as said board, in its discretion, considers in the best interests of the district: Provided, That such sale, leasing or rental may be made only upon: (1) The publication of notice of a hearing before the board of the public service district, as a Class I legal advertisement in compliance with the provisions of article three (§§ 59-3-1 et seq.), chapter fifty-nine of this code, in a newspaper published and of general circulation in the county or counties wherein the district is located, such publication to be made not earlier than twenty days and not later than seven days prior to the hearing; (2) approval by the county commission or commis-

sions of the county or counties in which the district operates; and (3) approval by the public service commission of West Virginia.

In the event of any such sale, the proceeds thereof, if any, remaining after payment of all outstanding bonds and other obligations of the district, shall be ratably distributed to any persons who have made contributions in aid of construction of such water, sewer or gas system, such distribution not to exceed the actual amount of any such contribution, without interest, and any balance of funds thereafter remaining shall be paid to the county commission of the county in which the major portion of such water, sewer or gas system is located to be placed in the general funds of such county commission. (1963, c. 75; 1981, c. 124; 1986, c. 81; 1997, c. 160.)

§ 16-13A-19. Statutory mortgage lien created; foreclosure thereof.

There shall be and is hereby created a statutory mortgage lien upon such public service properties of the district, which shall exist in favor of the holders of bonds hereby authorized to be issued, and each of them, and the coupons attached to said bonds, and such public service properties shall remain subject to such statutory mortgage lien until payment in full of all principal of and interest on such bonds. Any holder of such bonds, of any coupons attached thereto, may, either at law or in equity, enforce said statutory mortgage lien conferred hereby and upon default in the payment of the principal of or interest on said bonds, may foreclose such statutory mortgage lien in the manner now provided by the laws of the State of West Virginia for the foreclosure of mortgages on real property. (1953, c. 147.)

Rules of Civil Procedure. — As to abolition of the procedural distinctions between law and equity, see Rule 2.

In general. — The provision granting bond-

holders a statutory mortgage lien is valid. State ex rel. McMillion v. Stahl, 141 W. Va. 233, 89 S.E.2d 693 (1955).

§ 16-13A-20. Refunding revenue bonds.

The board of any district having issued bonds under the provisions of this article is hereby empowered thereafter by resolution to issue refunding bonds of such district for the purpose of retiring or refinancing such outstanding bonds, together with any unpaid interest thereon and redemption premium thereunto appertaining and all of the provisions of this article relating to the issuance, security and payment of bonds shall be applicable to such refunding bonds, subject, however, to the provisions of the proceedings which authorized the issuance of the bonds to be so refunded. (1953, c. 147.)

In general. — The only purpose for refunding bonds is the retirement or refinancing of outstanding bond issues of a particular district. Op. Att'y Gen., July 8, 1976.

Combination of bond issues. — Combination of two outstanding bond issues into one refunding bond issue may well be restricted by

the use of the singular language in this section. Op. Att'y Gen., July 8, 1976.

Previous issuance of bonds. — This section is clearly written in language which speaks only of refunding bonds issued by any district which has previously issued bonds. Op. Att'y Gen., July 8, 1976.

§ 16-13A-21. Complete authority of article; liberal construction; district to be public instrumentality; tax exemption.

This article is full and complete authority for the creation of public service districts and for carrying out the powers and duties of same as herein provided. The provisions of this article shall be liberally construed to accomplish its purpose and no procedure or proceedings, notices, consents or approvals, are required in connection therewith except as may be prescribed by this article: Provided, That all functions, powers and duties of the public service commission of West Virginia, the bureau of public health, the division of environmental protection and the environmental quality board remain unaffected by this article. Every district organized, consolidated, merged or expanded under this article is a public instrumentality created and functioning in the interest and for the benefit of the public, and its property and income and any bonds issued by it are exempt from taxation by the state of West Virginia, and the other taxing bodies of the state: Provided, however, That the board of any such district may use and apply any of its available revenues and income for the payment of what such board determines to be tax or license fee equivalents to any local taxing body and in any proceedings for the issuance of bonds of such district may reserve the right to annually pay a fixed or computable sum to such taxing bodies as such tax or license fee equivalent. (1953, c. 147; 1986, c. 81; 1994, c. 61.)

Constitutionality. — The tax exemption granted to the property, income, and bonds of the district does not violate W. Va. Const., art. X, § 1. State ex rel. McMillion v. Stahl, 141 W.

Va. 233, 89 S.E.2d 693 (1955).

Applied in Rhodes v. Malden Pub. Serv. Dist, 171 W. Va. 645, 301 S.E.2d 601 (1983).

§ 16-13A-22. Validation of prior acts and proceedings of county courts for creation of districts, inclusion of additional territory, and appointment of members of district boards.

All acts and proceedings taken by any county court [county commission] of this State purporting to have been carried out under the provisions of this article which have been taken, prior to the date this section takes effect for the purpose of creating public service districts or for the purpose of subsequent inclusion of additional territory to existing public service districts, after notice published by any such county court having territorial jurisdiction thereof of its intention to include such additional territory after hearing thereon, are hereby validated, ratified, approved and confirmed notwithstanding any other lack of power (other than constitutional) of any such county court to create such public service districts or to include additional territory to existing public service districts or irregularities (other than constitutional) in such proceedings, relating to the appointment and qualification of more than three members to the board of any such public service district or the subsequent appointment of successors of any or all of such members, notwithstanding that no city,

incorporated town or other municipal corporation having a population in excess of three thousand is included within the district, and the appointment and qualification of such members, and further including any irregularities in the petition for the creation of any public service district, irregularities in the description of the area embraced by such district, and irregularities in the notice and publication of notice for the hearing creating such district, prior to the date this section takes effect, is hereby validated, ratified, approved and confirmed; and, further, in such cases where more than three members of the board of such districts have been so appointed prior to the date this section takes effect then such county court shall appoint, and they are hereby authorized and empowered to appoint, successors to such members in the manner as otherwise provided by this article. (1958, c. 14; 1960, c. 19.)

Editor's notes. — For construction of the county court as the county commission, see W.Va. Const. art. IX, § 9.

Concerning the reference to "the date this section takes effect", Acts 1958, c. 14, which

enacted this section and included this language, became effective February 1, 1958. Acts 1960, c. 19, which amended this section, provided that the act take effect January 29, 1960.

§ 16-13A-23. Validation of acts and proceedings of public service boards.

All acts and proceedings taken by any public service board the members of which were appointed, prior to the date this section takes effect, by any county court [county commission] of this State having territorial jurisdiction thereof, are hereby validated, ratified, approved and confirmed, as to defects and irregularities which may otherwise exist on account of their appointment and qualification: Provided, however, That nothing herein contained shall be construed to excuse a criminal act. (1958, c. 14; 1960, c. 19; 1965, c. 134.)

Editor's notes. — For construction of the county court as the county commission, see W.Va. Const. art. IX, § 9.

Concerning the reference to "the date this

section takes effect", Acts 1965, c. 134, which amended this section, provided that the act take effect March 13, 1965.

§ 16-13A-24. Acceptance of loans, grants or temporary advances.

Any public service district created pursuant to the provisions of this article is authorized and empowered to accept loans or grants and procure loans or temporary advances evidenced by notes or other negotiable instruments issued in the manner, and subject to the privileges and limitations, set forth with respect to bonds authorized to be issued under the provisions of this article, for the purpose of paying part or all of the cost of construction or acquisition of water systems, sewage systems or gas facilities, or all of these, and the other purposes herein authorized, from any authorized agency or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual, which loans or temporary advances, including the interest thereon, may be repaid out of the proceeds of the bonds authorized to be issued under the provisions of this

article, the revenues of the said water system, sewage system or gas facilities or grants to the public service district from any authorized agency or from the United States of America or any federal or public agency or department of the United States or from any private agency, corporation or individual or from any combination of such sources of payment, and to enter into the necessary contracts and agreements to carry out the purposes hereof with any authorized agency or the United States of America or any federal or public agency or department of the United States, or with any private agency, corporation or individual. Any other provisions of this article to the contrary notwithstanding, interest on any such loans or temporary advances may be paid from the proceeds thereof until the maturity of such notes or other negotiable instrument. (1958, c. 14; 1980, c. 60; 1981, c. 124; 1986, c. 118.)

Permissible borrowing. — The borrowing by public service districts of money from counties and/or municipalities, as evidenced by a note, is permissible borrowing under this section. Op. Att'y Gen., May 6, 1988, No. 27.

§ 16-13A-25. Borrowing and bond issuance; procedure.

Notwithstanding any other provisions of this article to the contrary, a public service district shall not borrow money, enter into contracts for the provision of engineering, design or feasibility studies, issue or contract to issue revenue bonds or exercise any of the powers conferred by the provisions of section thirteen, twenty or twenty-four (§ 16-13A-13, § 16-13A-20 or § 16-13A-24) of this article, without the prior consent and approval of the public service commission. The public service commission may waive the provision of prior consent and approval for entering into contracts for engineering, design or feasibility studies pursuant to this section for good cause shown which is evidenced by the public service district filing a request for waiver of this section stated in a letter directed to the commission with a brief description of the project, evidence of compliance with chapter five-g (§§ 5G-1-1 et seq.) of this code, and further explanation of ability to evaluate their own engineering contract, including, but not limited to: (1) Experience with the same engineering firm in the past two years requiring engineering services; or (2) completion of a construction project within the past two years requiring engineering services. The district shall also forward an executed copy of the engineering contract to the commission after receiving approval of the waiver. Unless the properties to be constructed or acquired represent ordinary extensions or repairs of existing systems in the usual course of business, a public service district must first obtain a certificate of public convenience and necessity from the public service commission in accordance with the provisions of chapter twenty-four (§§ 24-1-1 et seq.) of this code, when a public service district is seeking to acquire or construct public service property.

Thirty days prior to making formal application for the certificate, the public service district shall prefile with the public service commission its plans and supporting information for the project and shall publish a Class II legal advertisement in a newspaper or newspapers of general circulation in each city, incorporated town or municipal corporation if available in the public service district, which legal advertisement shall state:

(a) The amount of money to be borrowed, or the amount of revenue bonds to be issued: Provided, That if the amount is an estimate, the notice may be stated in terms of an amount "not to exceed" a specific amount;

(b) The interest rate and terms of the loan or bonds: Provided, That if the interest rate is an estimate, the notice may be stated in terms of a rate "not to exceed" a specific rate;

(c) The public service properties to be acquired or constructed, and the cost of the public service properties;

(d) The anticipated rates which will be charged by the public service district: Provided, That if the rates are an estimate, the notice may be stated in terms of rates "not to exceed" a specific rate; and

(e) The date that the formal application for a certificate of public convenience and necessity is to be filed with the public service commission. The public service commission may grant its consent and approval for the certificate, or any other request for approval under this section, subject to such terms and conditions as may be necessary for the protection of the public interest, pursuant to the provisions of chapter twenty-four of this code, or may withhold such consent and approval for the protection of the public interest.

In the event of disapproval, the reasons for the disapproval shall be assigned in writing by the commission. (1969, 1st Ex. Sess., c. 6; 1981, c. 124; 1986, c. 81; 1996, c. 213; 1997, c. 159.)

Cross references. — Class II legal advertisement defined, § 59-3-2.

Certificate. — Under this section, a public service district must first obtain a certificate of public convenience and necessity before it can acquire or construct public service property. *Sexton v. Public Serv. Comm'n*, 188 W. Va. 305, 423 S.E.2d 914 (1992).

Eminent domain. — Although construction

of a new facility proposed by a utility will often require the taking of private property through eminent domain, in the absence of express statutory language, the public service commission has no duty to review and decide issues that are inherent in the eminent domain proceeding. *Sexton v. Public Serv. Comm'n*, 188 W. Va. 305, 423 S.E.2d 914 (1992).

ARTICLE 13B.

COMMUNITY IMPROVEMENT ACT.

Sec.	Sec.
16-13B-1. Short title.	ers; ordinance or order authorizing creation of assessment district and construction of project.
16-13B-2. Definitions.	
16-13B-3. Power and authority of counties and municipalities relating to flood relief, wastewater and water projects.	16-13B-8. Assessment district to be a public corporation and political subdivision; powers thereof; community improvement boards.
16-13B-4. Determination of need and feasibility of creating an assessment district.	16-13B-9. Provisions for construction of a project.
16-13B-5. Notice to property owners before creation of assessment district and construction of project; form of notice; affidavit of publication.	16-13B-10. Notice to property owners of assessments; hearings, correcting and laying assessments; report on project completion; permits.
16-13B-6. Petition of property owners for creation of assessment district.	16-13B-11. Construction of projects; assessments; corner lots, etc.
16-13B-7. Receipt of petition of property owners;	16-13B-12. Apportionment and assessment of cost.

**MICHIE'STM
WEST VIRGINIA
CODE
ANNOTATED**

VOLUME 5A

2001 Replacement Volume

2004 SUPPLEMENT

*Including Acts passed through
the 2004 Regular
and First Extraordinary Sessions*

Prepared by the Editorial Staff of the Publisher

Place in pocket of corresponding bound volume



LexisNexis[®]

(m) The board collecting such rates, fees or charges shall be obligated under reasonable rules to shut off and discontinue both water and sewer services to all delinquent users of either water facilities, or sewer facilities or both, and shall not restore either water facilities or sewer facilities, to any delinquent user of either until all delinquent rates, fees or charges for both water facilities, and sewer facilities, including reasonable interest and penalty charges, have been paid in full. (1933, Ex. Sess., c. 25, § 16; 1933, 2nd Ex. Sess., c. 48; 1959, c. 125; 1967, c. 105; 2001, c. 212; 2004, c. 185.)

Effect of amendment of 2004. — Acts 2004, c. 185, effective June 10, 2004, inserted "deposit required for new customers; forfeiture of deposit; reconnecting deposit; tenant's deposit" in the introductory language; added the subsection designations for (c) through (m); added (d) and (e); substituted "Class II-O" for

"Class II-O" in (h); substituted "within twenty days" for "within thirty days" in (k); in (j) substituted "twenty days" for "thirty days" and added the second sentence; and deleted "and regulations" following "reasonable rules" in (m).

ARTICLE 13A.

PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.

Sec.		Sec.	
16-13A-1c.	General purpose of districts.		lic service properties; right of eminent domain; extraterritorial powers.
16-13A-2.	Creation of districts by county commission; enlarging, reducing, merging, or dissolving district; consolidation; agreements, etc.; infringing upon powers of county commission; filing list of members and districts with the secretary of state.	16-13A-9.	Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.
16-13A-3.	District to be a public corporation and political subdivision; powers thereof; public service boards.	16-13A-14.	Items included in cost of properties.
16-13A-5.	General manager of board.	16-13A-18a.	Sale, lease or rental of water, sewer, stormwater or gas system by district; distribution of proceeds.
16-13A-7.	Acquisition and operation of district properties.	16-13A-24.	Acceptance of loans, grants or temporary advances.
16-13A-8.	Acquisition and purchase of public service properties.	16-13A-25.	Borrowing and bond issuance procedure.

§ 16-13A-1. Legislative findings.

Code of State Rules References. — Government of public service districts, 150 CSR 17, effective September 1, 1990.

§ 16-13A-1c. General purpose of districts.

Any territory constituting the whole or any part of one or more counties in the state so situated that the construction or acquisition by purchase or otherwise and the maintenance, operation, improvement and extension of properties supplying water, sewerage or stormwater services or gas distribution services or all of these within such territory, will be conducive to the preservation of the public health, comfort and convenience of such area, may

be constituted a public service district under and in the manner provided by this article. The words "public service properties," when used in this article, shall mean and include any facility used or to be used for or in connection with:

(1) The diversion, development, pumping, impounding, treatment, storage, distribution or furnishing of water to or for the public for industrial, public, private or other uses (herein sometimes referred to as "water facilities"); (2) the collection, treatment, purification or disposal of liquid or solid wastes, sewage or industrial wastes (herein sometimes referred to as "sewer facilities" or "landfills"); (3) the distribution or the furnishing of natural gas to the public for industrial, public, private or other uses (herein sometimes referred to as "gas utilities or gas system"); or (4) the collection, control or disposal of stormwater (herein sometimes referred to as "stormwater system" or "stormwater systems"), or (5) the management, operation, maintenance and control of stormwater and stormwater systems (herein sometimes referred to as "stormwater management program" or "stormwater management programs").

As used in this article "stormwater system" or "stormwater systems" means a stormwater system in its entirety or any integral part thereof used to collect, control or dispose of stormwater, and includes all facilities, structures and natural water courses used for collecting and conducting stormwater to, through and from drainage areas to the points of final outlet including, but not limited to, any and all of the following: Inlets, conduits, outlets, channels, ponds, drainage easements, water quality facilities, catch basins, ditches, streams, gulches, flumes, culverts, siphons, retention or detention basins, dams, floodwalls, pipes, flood control systems, levies and pumping stations: Provided, That the term "stormwater system" or "stormwater systems" does not include highways, road and drainage easements, or stormwater facilities constructed, owned or operated by the West Virginia division of highways. As used in this article "stormwater management program" or "stormwater management programs" means those activities associated with the management, operation, maintenance and control of stormwater and stormwater systems, and includes, but is not limited to, public education, stormwater and surface runoff water quality improvement, mapping, planning, flood control, inspection, enforcement and any other activities required by state and federal law: Provided, however, That the term "stormwater management program" or "stormwater management programs" does not include those activities associated with the management, operation, maintenance and control of highways, road and drainage easements, or stormwater facilities constructed, owned or operated by the West Virginia division of highways without the express agreement of the commissioner of highways. (1986, c. 81; 2002, c. 272.)

Effect of amendment of 2002. — Acts 2002, c. 272, effective June 7, 2002, inserted "or stormwater" following sewerage" in the first

sentence; added subdivisions (4) and (5); added the last two sentences; and made minor stylistic changes.

§ 16-13A-2. Creation of districts by county commission; enlarging, reducing, merging, or dissolving district; consolidation; agreements, etc.; infringing upon powers of county commission; filing list of members and districts with the secretary of state.

(a) The county commission of any county may propose the creation, enlargement, reduction, merger, dissolution, or consolidation of a public service district by any of the following methods: (1) On its own motion by order duly adopted, (2) upon the recommendation of the public service commission, or (3) by petition of twenty-five percent of the registered voters who reside within the limits of the proposed public service district within one or more counties. The petition shall contain a description, including metes and bounds, sufficient to identify the territory to be embraced therein and the name of such proposed district. Provided, That after the effective date of this section, no new public service district shall be created, enlarged, reduced, merged, dissolved or consolidated under this section without the written consent and approval of the public service commission, which approval and consent shall be in accordance with rules promulgated by the public service commission and may only be requested after consent is given by the appropriate county commission or commissions pursuant to this section. Any territory may be included regardless of whether or not the territory includes one or more cities, incorporated towns or other municipal corporations which own and operate any public service properties and regardless of whether or not it includes one or more cities, incorporated towns or other municipal corporations being served by privately owned public service properties: Provided, however, That the same territory shall not be included within the boundaries of more than one public service district except where the territory or part thereof is included within the boundaries of a separate public service district organized to supply water, sewerage services, stormwater services or gas facilities not being furnished within such territory or part thereof: Provided further, That no city, incorporated town or other municipal corporation shall be included within the boundaries of the proposed district except upon the adoption of a resolution of the governing body of the city, incorporated town or other municipal corporation consenting.

(b) The petition shall be filed in the office of the clerk of the county commission of the county in which the territory to constitute the proposed district is situated, and if the territory is situated in more than one county, then the petition shall be filed in the office of the clerk of the county commission of the county in which the major portion of the territory extends, and a copy thereof (omitting signatures) shall be filed with each of the clerks of the county commission of the other county or counties into which the territory extends. The clerk of the county commission receiving such petition shall present it to the county commission of the county at the first regular meeting after the filing or at a special meeting called for the consideration thereof.

(c) When the county commission of any county enters an order on its own motion proposing the creation, enlargement, reduction, merger, dissolution or consolidation of a public service district, as aforesaid, or when a petition for the creation is presented, as aforesaid, the county commission shall at the same session fix a date of hearing in the county on the creation, enlargement, reduction, merger, dissolution or consolidation of the proposed public service district, which date so fixed shall be not more than forty days nor less than twenty days from the date of the action. If the territory proposed to be included is situated in more than one county, the county commission, when fixing a date of hearing, shall provide for notifying the county commission and clerk thereof of each of the other counties into which the territory extends of the date so fixed. The clerk of the county commission of each county in which any territory in the proposed public service district is located shall cause notice of the hearing and the time and place thereof, and setting forth a description of all of the territory proposed to be included therein to be given by publication as a Class I legal advertisement in compliance with the provisions of article three (§§ 59-3-1 et seq.), chapter fifty-nine of this code, and the publication area for the publication shall be by publication in each city, incorporated town or municipal corporation if available in each county in which any territory in the proposed public service district is located. The publication shall be at least ten days prior to the hearing.

(d) In all cases where proceedings for the creation, enlargement, reduction, merger, dissolution or consolidation of the public service districts are initiated by petition as aforesaid, the person filing the petition shall advance or satisfactorily indemnify the payment of the cost and expenses of publishing the hearing notice, and otherwise the costs and expenses of the notice shall be paid in the first instance by the county commission out of contingent funds or any other funds available or made available for that purpose. In addition to the notice required herein to be published, there shall also be posted in at least five conspicuous places in the proposed public service district, a notice containing the same information as is contained in the published notice. The posted notices shall be posted not less than ten days before the hearing.

(e) All persons residing in or owning or having any interest in property in the proposed public service district shall have an opportunity to be heard for and against its creation, enlargement, reduction, merger, dissolution or consolidation. At the hearing the county commission before which the hearing is conducted shall consider and determine the feasibility of the creation, enlargement, reduction, merger, dissolution or consolidation of the proposed district. If the county commission determines that the construction or acquisition by purchase or otherwise and maintenance, operation, improvement and extension of public service properties by the public service district will be conducive to the preservation of public health, comfort and convenience of such area, the county commission shall by order create, enlarge, reduce, merge, dissolve or consolidate such public service district. If the county commission, after due consideration, determines that the proposed district will not be conducive to the preservation of public health, comfort or convenience of the area or that the creation, enlargement, reduction, merger, dissolution or

consolidation of the proposed district as set forth and described in the petition or order is not feasible, it may refuse to enter an order creating the district or it may enter an order amending the description of the proposed district and create, enlarge, reduce, merge, dissolve or consolidate the district as amended.

(f) If the county commission determines that any other public service district or districts can adequately serve the area of the proposed public service district, whether by enlargement, reduction, merger, dissolution or consolidation, it shall refuse to enter the order, but shall enter an order creating, enlarging, reducing, merging, dissolving or consolidating the area with an existing public service district, in accordance with rules adopted by the public service commission for such purpose: Provided, That no enlargement of a public service district may occur if the present or proposed physical facilities of the public service district are determined by the appropriate county commission or the public service commission to be inadequate to provide such enlarged service. The clerk of the county commission of each county into which any part of such district extends shall retain in his office an authentic copy of the order creating, enlarging, reducing, merging, dissolving or consolidating the district. Provided, however, That within ten days after the entry of an order creating, enlarging, reducing, merging, dissolving or consolidating a district, such order must be filed for review and approval by the public service commission. The public service commission shall provide a hearing in the affected county on the matter and may approve, reject or modify the order of the county commission if it finds it is in the best interests of the public to do so. The public service commission shall adopt rules relating to such filings and the approval, disapproval or modification of county commission orders for creating, enlarging, merging, dissolving or consolidating districts. The provisions of this section shall not apply to the implementation by a county commission of an order issued by the public service commission pursuant to this section and section one-b [§ 16-13A-1b], of this article.

(g) The county commission may, if in its discretion it deems it necessary, feasible and proper, enlarge the district to include additional areas, reduce the area of the district, where facilities, equipment, service or materials have not been extended, or dissolve the district if inactive or create or consolidate two or more such districts. If consolidation of districts is not feasible, the county commission may consolidate and centralize management and administration of districts within its county or multi-county area to achieve efficiency of operations: Provided, That where the county commission determines on its own motion by order entered of record, or there is a petition to enlarge the district, merge and consolidate districts, or the management and administration thereof, reduce the area of the district or dissolve the district if inactive, all of the applicable provisions of this article providing for hearing, notice of hearing and approval by the public service commission shall apply. The commission shall at all times attempt to bring about the enlargement or merger of existing public service districts in order to provide increased services and to eliminate the need for creation of new public service districts in those areas which are not currently serviced by a public service district: Provided, however, That where two or more public service districts are consolidated

pursuant to this section, any rate differentials may continue for the period of bonded indebtedness incurred prior to consolidation. The districts may not enter into any agreement, contract or covenant that infringes upon, impairs, abridges or usurps the duties, rights or powers of the county commission, as set forth in this article, or conflicts with any provision of this article.

(h) A list of all districts and their current board members shall be filed by the county commission with the secretary of state and the public service commission by the first day of July of each year. (1953, c. 147; 1965, c. 134; 1967, c. 105; 1975, c. 140; 1980, c. 60; 1981, c. 124; 1986, c. 81; 1995, c. 125; 2002, c. 272.)

Effect of amendment of 2002. — Acts 2002, c. 272, effective June 7, 2002, in part: (1) and inserted "stormwater services" near the middle of the last sentence. Capitalized "On" at the beginning of subdivision

§ 16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.

From and after the date of the adoption of the order creating any public service district, it is a public corporation and political subdivision of the state, but without any power to levy or collect ad valorem taxes. Each district may acquire, own and hold property, both real and personal, in its corporate name. It may sue, may be sued, may adopt an official seal and may enter into contracts necessary or incidental to its purposes, including contracts with any city, incorporated town or other municipal corporation located within or without its boundaries for furnishing wholesale supply of water for the distribution system of the city, town or other municipal corporation, or for furnishing stormwater services for the city, town or other municipal corporation, and contract for the operation, maintenance, servicing, repair and extension of any properties owned by it or for the operation and improvement or extension by the district of all or any part of the existing municipally owned public service properties of any city, incorporated town or other municipal corporation included within the district: Provided, That no contract shall extend beyond a maximum of forty years, but provisions may be included therein for a renewal or successive renewals thereof and shall conform to and comply with the rights of the holders of any outstanding bonds issued by the municipalities for the public service properties.

The powers of each public service district shall be vested in and exercised by a public service board consisting of not less than three members, who shall be persons residing within the district, who possess certain educational, business or work experience which will be conducive to operating a public service district. Each board member shall, within six months of taking office, successfully complete the training program to be established and administered by the public service commission in conjunction with the division of environmental protection and the bureau of public health. Board members shall not be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service, or in furnishing any supplies or materials to the district nor

shall a former board member be hired by the district in any capacity within a minimum of twelve months after board member's term has expired or such board member has resigned from the district board. The members shall be appointed in the following manner:

Each city, incorporated town or other municipal corporation having a population of more than three thousand but less than eighteen thousand shall be entitled to appoint one member of the board, and each city, incorporated town or other municipal corporation having a population in excess of eighteen thousand shall be entitled to appoint one additional member of the board for each additional eighteen thousand population. The members of the board representing such cities, incorporated towns or other municipal corporations shall be residents thereof and shall be appointed by a resolution of the governing bodies thereof and upon the filing of a certified copy or copies of the resolution or resolutions in the office of the clerk of the county commission which entered the order creating the district, the persons so appointed become members of the board without any further act or proceedings. If the number of members of the board so appointed by the governing bodies of cities, incorporated towns or other municipal corporations included in the district equals or exceeds three, then no further members shall be appointed to the board and the members so appointed are the board of the district except in cases of merger or consolidation where the number of board members may equal five.

If no city, incorporated town or other municipal corporation having a population of more than three thousand is included within the district, then the county commission which entered the order creating the district shall appoint three members of the board, who are persons residing within the district and residing within the state of West Virginia, which three members become members of the board of the district without any further act or proceedings except in cases of merger or consolidation where the number of board members may equal five.

If the number of members of the board appointed by the governing bodies of cities, incorporated towns or other municipal corporations included within the district is less than three, then the county commission which entered the order creating the district shall appoint such additional member or members of the board, who are persons residing within the district, as is necessary to make the number of members of the board equal three except in cases of merger or consolidation where the number of board members may equal five, and the member or members appointed by the governing bodies of the cities, incorporated towns or other municipal corporations included within the district and the additional member or members appointed by the county commission as aforesaid, are the board of the district. A person may serve as a member of the board in one or more public service districts.

The population of any city, incorporated town or other municipal corporation, for the purpose of determining the number of members of the board, if any, to be appointed by the governing body or bodies thereof, is the population stated for such city, incorporated town or other municipal corporation in the last official federal census.

Notwithstanding any provision of this code to the contrary, whenever a district is consolidated or merged pursuant to section two (§ 16-13A-2) of this

article, the terms of office of the existing board members shall end on the effective date of the merger or consolidation. The county commission shall appoint a new board according to rules promulgated by the public service commission. Whenever districts are consolidated or merged no provision of this code prohibits the expansion of membership on the new board to five.

The respective terms of office of the members of the first board shall be fixed by the county commission and shall be as equally divided as may be, that is approximately one third of the members for a term of two years, a like number for a term of four years, the term of the remaining member or members for six years, from the first day of the month during which the appointments are made. The first members of the board appointed as aforesaid shall meet at the office of the clerk of the county commission which entered the order creating the district as soon as practicable after the appointments and shall qualify by taking an oath of office: Provided, That any member or members of the board may be removed from their respective office as provided in section three-a (16-13A-3a) of this article.

Any vacancy shall be filled for the unexpired term within thirty days, otherwise successor members of the board shall be appointed for terms of six years and the terms of office shall continue until successors have been appointed and qualified. All successor members shall be appointed in the same manner as the member succeeded was appointed. The district shall provide to the public service commission, within thirty days of the appointment, the following information: The new board member's name, home address, home and office phone numbers, date of appointment, length of term, who the new member replaces and if the new appointee has previously served on the board. The public service commission shall notify each new board member of the legal obligation to attend training as prescribed in this section.

The board shall organize within thirty days following the first appointments and annually thereafter at its first meeting after the first day of January of each year by selecting one of its members to serve as chair and by appointing a secretary and a treasurer who need not be members of the board. The secretary shall keep a record of all proceedings of the board which shall be available for inspection as other public records. Duplicate records shall be filed with the county commission and shall include the minutes of all board meetings. The treasurer is lawful custodian of all funds of the public service district and shall pay same out on orders authorized or approved by the board. The secretary and treasurer shall perform other duties appertaining to the affairs of the district and shall receive salaries as shall be prescribed by the board. The treasurer shall furnish bond in an amount to be fixed by the board for the use and benefit of the district.

The members of the board, and the chair, secretary and treasurer thereof, shall make available to the county commission, at all times, all of its books and records pertaining to the district's operation, finances and affairs, for inspection and audit. The board shall meet at least monthly. (1953, c. 147; 1965, c. 154; 1971, c. 72; 1981, c. 124; 1983, c. 166; 1986, c. 81; 1994, c. 61; 1997, c. 159; 2002, c. 272.)

Effect of amendment of 2002. — Acts 2002, c. 272, effective June 7, 2002, inserted "or for furnishing stormwater services for the city."

town or other municipal corporation" in the second sentence of the first paragraph.

§ 16-13A-5. General manager of board.

The board may employ a general manager to serve a term of not more than five years and until his or her successor is employed, and his or her compensation shall be fixed by resolution of the board. Such general manager shall devote all or the required portion of his or her time to the affairs of the district and may employ, discharge and fix the compensation of all employees of the district, except as in this article otherwise provided, and he or she shall perform and exercise such other powers and duties as may be conferred upon him or her by the board.

Such general manager shall be chosen without regard to his or her political affiliations and upon the sole basis of his or her administrative and technical qualifications to manage public service properties and affairs of the district and he or she may be discharged only upon the affirmative vote of two thirds of the board. Such general manager need not be a resident of the district at the time he or she is chosen. Such general manager may not be a member of the board but shall be an employee of the board.

The board of any public service district which purchases water, sewer or stormwater service from a municipal water, sewer or stormwater system or another public service district may, as an alternative to hiring its own general manager, elect to permit the general manager of the municipal water, sewer or stormwater system or public service district from which such water, sewer or stormwater service is purchased provide professional management to the district, if the appropriate municipality or public service board agrees to provide such assistance. The general manager shall receive reasonable compensation for such service. (1953, c. 147; 1981, c. 124; 1986, c. 81; 2002, c. 272.)

Effect of amendment of 2002. — Acts 2002, c. 272, effective June 7, 2002, inserted "or stormwater" following "sewer" four times in the

third paragraph, and made minor stylistic changes.

§ 16-13A-7. Acquisition and operation of district properties.

The board of such districts shall have the supervision and control of all public service properties acquired or constructed by the district, and shall have the power, and it shall be its duty, to maintain, operate, extend and improve the same, including, but not limited to, those activities necessary to comply with all federal and state requirements, including water quality improvement activities. All contracts involving the expenditure by the district of more than fifteen thousand dollars for construction work or for the purchase of equipment and improvements, extensions or replacements, shall be entered into only after notice inviting bids shall have been published as a Class I legal advertisement in compliance with the provision of article three (§§ 59-3-1 et seq.), chapter fifty-nine of this code, and the publication area for such publication shall be as

specified in section two [§ 16-13A-2] of this article in the county or counties in which the district is located. The publication shall not be less than ten days prior to the making of any such contract. To the extent allowed by law, in-state contractors shall be given first priority in awarding public service district contracts. It shall be the duty of the board to ensure that local in-state labor shall be utilized to the greatest extent possible when hiring laborers for public service district construction or maintenance repair jobs. It shall further be the duty of the board to encourage contractors to use American made products in their construction to the extent possible. Any obligations incurred of any kind or character shall not in any event constitute or be deemed an indebtedness within the meaning of any of the provisions or limitations of the constitution, but all such obligations shall be payable solely and only out of revenues derived from the operation of the public service properties of the district or from proceeds of bonds issued as hereinafter provided. No continuing contract for the purchase of materials or supplies or for furnishing the district with electrical energy or power shall be entered into for a longer period than fifteen years. (1953, c. 147; 1967, c. 105; 1981, c. 124; 1982, c. 24; 1986, c. 81; 1997, c. 159; 2002, c. 272.)

Effect of amendment of 2002. — Acts 2002, c. 272, effective June 7, 2002, added "including, but not limited to, those activities

necessary to comply with all federal and state requirements, including water quality improvement activities" to the end of the first sentence.

§ 16-13A-8. Acquisition and purchase of public service properties; right of eminent domain; extraterritorial powers.

The board may acquire any publicly or privately owned public service properties located within the boundaries of the district regardless of whether or not all or any part of such properties are located within the corporate limits of any city, incorporated town or other municipal corporation included within the district and may purchase and acquire all rights and franchises and any and all property within or outside the district necessary or incidental to the purpose of the district.

The board may construct any public service properties within or outside the district necessary or incidental to its purposes and each such district may acquire, construct, maintain and operate any such public service properties within the corporate limits of any city, incorporated town or other municipal corporation included within the district or in any unincorporated territory within ten miles of the territorial boundaries of the district: Provided, That if any incorporated city, town or other municipal corporation included within the district owns and operates either water facilities, sewer facilities, stormwater facilities or gas facilities or all of these, then the district may not acquire, construct, establish, improve or extend any public service properties of the same kind within such city, incorporated towns or other municipal corporations or the adjacent unincorporated territory served by such cities, incorporated towns or other municipal corporations, except upon the approval of the public service commission, the consent of such cities, incorporated towns or other municipal corporations and in conformity and compliance with the rights

of the holders of any revenue bonds or obligations theretofore issued by such cities, incorporated towns or other municipal corporations then outstanding and in accordance with the ordinance, resolution or other proceedings which authorize the issuance of such revenue bonds or obligations.

Whenever such district has constructed, acquired or established water facilities, sewer facilities, a stormwater system, stormwater management program or gas facilities for water, sewer, stormwater or gas services within any city, incorporated town or other municipal corporation included within a district, then such city, incorporated town or other municipal corporation may not thereafter construct, acquire or establish any facilities of the same kind within such city, incorporated town or other municipal corporation without the consent of such district.

For the purpose of acquiring any public service properties or lands, rights or easements deemed necessary or incidental for the purposes of the district, each such district has the right of eminent domain to the same extent and to be exercised in the same manner as now or hereafter provided by law for such right of eminent domain by cities, incorporated towns and other municipal corporations: Provided, That the power of eminent domain provided in this section does not extend to highways, road and drainage easements, or stormwater facilities constructed, owned or operated by the West Virginia division of highways: Provided, however, That such board may not acquire all or any substantial part of a privately owned waterworks system unless and until authorized so to do by the public service commission of West Virginia, and that this section shall not be construed to authorize any district to acquire through condemnation proceedings either in whole or substantial part an existing privately owned waterworks plant or system or gas facilities located in or furnishing water or gas service within such district or extensions made or to be made by it in territory contiguous to such existing plant or system, nor may any such board construct or extend its public service properties to supply its services into areas served by or in competition with existing waterworks or gas facilities or extensions made or to be made in territory contiguous to such existing plant or system by the owner thereof. (1953, c. 147; 1980, c. 60; 1981, c. 124; 2002, c. 272.)

Effect of amendment of 2002. — Acts 2002, c. 272, effective June 7, 2002, in the second paragraph, inserted "stormwater facilities" following "sewer facilities" in the proviso; in the third paragraph, inserted "a stormwater

system, stormwater management program" following "sewer facilities" and "stormwater" preceding "or gas services"; in the last paragraph, added a new first proviso and redesignated the former first proviso as the second.

§ 16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.

(a)(1) The board may make, enact and enforce all needful rules in connection with the acquisition, construction, improvement, extension, management, maintenance, operation, care, protection and the use of any public service properties owned or controlled by the district. The board shall establish rates,

and charges for the services and facilities it furnishes, which shall be sufficient at all times, notwithstanding the provisions of any other law or laws. It shall pay the cost of maintenance, operation and depreciation of the public service properties and principal of and interest on all bonds issued, other obligations incurred under the provisions of this article and all reserve or other payments provided for in the proceedings which authorized the issuance of any bonds under this article. The schedule of the rates, fees and charges may be based upon:

(A) The consumption of water or gas on premises connected with the facilities, taking into consideration domestic, commercial, industrial and public use of water and gas;

(B) The number and kind of fixtures connected with the facilities located on the various premises;

(C) The number of persons served by the facilities;

(D) Any combination of paragraphs (A), (B) and (C) of this subdivision; or

(E) May be determined on any other basis or classification which the board may determine to be fair and reasonable, taking into consideration the location of the premises served and the nature and extent of the services and facilities furnished. However, no rates, fees or charges for stormwater services may be assessed against highways, road and drainage easements or stormwater facilities constructed, owned or operated by the West Virginia division of highways.

(2) Where water, sewer, stormwater or gas services, or any combination thereof, are all furnished to any premises, the schedule of charges may be billed as a single amount for the aggregate of the charges. The board shall require all users of services and facilities furnished by the district to designate on every application for service whether the applicant is a tenant or an owner of the premises to be served. If the applicant is a tenant, he or she shall state the name and address of the owner or owners of the premises to be served by the district. Notwithstanding the provisions of section eight [§ 24-3-8], article three, chapter twenty-four of this code to the contrary, all new applicants for service shall deposit the greater of a sum equal to two twelfths of the average annual usage of the applicant's specific customer class or fifty dollars, with the district to secure the payment of service rates, fees and charges in the event they become delinquent as provided in this section. If a district provides both water and sewer service, all new applicants for service shall deposit the greater of a sum equal to two twelfths of the average annual usage for water service or fifty dollars and the greater of a sum equal to two twelfths of the average annual usage for wastewater service of the applicant's specific customer class or fifty dollars. In any case where a deposit is forfeited to pay service rates, fees and charges which were delinquent at the time of disconnection or termination of service, no reconnection or reinstatement of service may be made by the district until another deposit equal to the greater of a sum equal to two twelfths of the average usage for the applicant's specific customer class or fifty dollars has been remitted to the district. After twelve months of prompt payment history, the district shall return the deposit to the customer or credit the customer's account at a rate as the public service commission may

prescribe: Provided, That where the customer is a tenant, the district is not required to return the deposit until the time the tenant discontinues service with the district. Whenever any rates, fees, rentals or charges for services or facilities furnished remain unpaid for a period of twenty days after the same become due and payable, the user of the services and facilities provided is delinquent and the user is liable at law until all rates, fees and charges are fully paid. The board may, under reasonable rules promulgated by the public service commission, shut off and discontinue water or gas services to all delinquent users of either water or gas facilities, or both, ten days after the water or gas services become delinquent.

(b) In the event that any publicly or privately owned utility, city, incorporated town, other municipal corporation or other public service district included within the district owns and operates separately either water facilities or sewer facilities, and the district owns and operates the other kind of facilities, either water or sewer, as the case may be, then the district and the publicly or privately owned utility, city, incorporated town or other municipal corporation or other public service district shall covenant and contract with each other to shut off and discontinue the supplying of water service for the nonpayment of sewer service fees and charges: Provided, That any contracts entered into by a public service district pursuant to this section shall be submitted to the public service commission for approval. Any public service district providing water and sewer service to its customers has the right to terminate water service for delinquency in payment of either water or sewer bills. Where one public service district is providing sewer service and another public service district or a municipality included within the boundaries of the sewer district is providing water service, and the district providing sewer service experiences a delinquency in payment, the district or the municipality included within the boundaries of the sewer district that is providing water service, upon the request of the district providing sewer service to the delinquent account, shall terminate its water service to the customer having the delinquent sewer account: Provided, however, That any termination of water service must comply with all rules and orders of the public service commission.

(c) Any district furnishing sewer facilities within the district may require, or may by petition to the circuit court of the county in which the property is located, compel or may require the division of health to compel all owners, tenants or occupants of any houses, dwellings and buildings located near any sewer facilities where sewage will flow by gravity or be transported by other methods approved by the division of health, including, but not limited to, vacuum and pressure systems, approved under the provisions of section nine [§ 16-1-9], article one, chapter sixteen of this code, from the houses, dwellings or buildings into the sewer facilities, to connect with and use the sewer facilities and to cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from the houses, dwellings and buildings where there is gravity flow or transportation by any other methods approved by the division of health, including, but not limited to, vacuum and pressure systems, approved under the provisions of section nine, article one,

Chapter sixteen of this code and the houses, dwellings and buildings can be immediately served by the sewer facilities of the district and it is declared that the mandatory use of the sewer facilities provided for in this paragraph is necessary and essential for the health and welfare of the inhabitants and tenants of the districts and of the state. If the public service district requires the property owner to connect with the sewer facilities even when sewage from dwellings may not flow to the main line by gravity and the property owner incurs costs for any changes in the existing dwellings' exterior plumbing in order to connect to the main sewer line, the public service district board shall authorize the district to pay all reasonable costs for the changes in the exterior plumbing, including, but not limited to, installation, operation, maintenance and purchase of a pump or any other method approved by the division of health. Maintenance and operation costs for the extra installation should be reflected in the users charge for approval of the public service commission. The circuit court shall adjudicate the merits of the petition by summary hearing to be held not later than thirty days after service of petition to the appropriate owners, tenants or occupants.

(c) Whenever any district has made available sewer facilities to any owner, tenant or occupant of any house, dwelling or building located near the sewer facility and the engineer for the district has certified that the sewer facilities are available to and are adequate to serve the owner, tenant or occupant and sewage will flow by gravity or be transported by other methods approved by the division of health from the house, dwelling or building into the sewer facilities, the district may charge, and the owner, tenant or occupant shall pay the rates and charges for services established under this article only after thirty-day notice of the availability of the facilities has been received by the owner, tenant or occupant. Rates and charges for sewage services shall be based upon actual water consumption or the average monthly water consumption based upon the owner's, tenant's or occupant's specific customer class.

(d) Whenever any district has made available a stormwater system to any owner, tenant or occupant of any real property located near the stormwater system and where stormwater from real property affects or drains into the stormwater system, it is hereby found, determined and declared that the owner, tenant or occupant is being served by the stormwater system and it is further hereby found, determined and declared that the mandatory use of the stormwater system is necessary and essential for the health and welfare of the inhabitants and residents of the district and of the state. The district may charge, and the owner, tenant or occupant shall pay the rates, fees and charges for stormwater services established under this article only after thirty-day notice of the availability of the stormwater system has been received by the owner.

(e) All delinquent fees, rates and charges of the district for either water facilities, sewer facilities, gas facilities or stormwater systems or stormwater management programs are liens on the premises served of equal dignity, rank and priority with the lien on the premises of state, county, school and municipal taxes. In addition to the other remedies provided in this section, public service districts are granted a deferral of filing fees or other fees and

costs incidental to the bringing and maintenance of an action in magistrate court for the collection of delinquent water, sewer, stormwater or gas bills; the district collects the delinquent account, plus reasonable costs, from the customer or other responsible party, the district shall pay to the magistrate the normal filing fee and reasonable costs which were previously deferred. In addition, each public service district may exchange with other public service districts a list of delinquent accounts: Provided, That an owner of real property may not be held liable for the delinquent rates or charges for services or facilities of a tenant, nor may any lien attach to real property for the reason of delinquent rates or charges for services or facilities of a tenant of the real property, unless the owner has contracted directly with the public service district to purchase the services or facilities.

(g) Anything in this section to the contrary notwithstanding, any establishment, as defined in section three [§ 22-11-3], article eleven, chapter twenty-two, now or hereafter operating its own sewage disposal system pursuant to permit issued by the division of environmental protection, as prescribed by section eleven [§ 22-11-11], article eleven, chapter twenty-two of this code, is exempt from the provisions of this section. (1953, c. 147; 1965, c. 134; 1980, c. 60; 1981, c. 124; 1986, c. 81; 1989, c. 174; 1994, c. 61; 2002, c. 272; 2003, c. 183.)

Code of State Rules References. — Rules and regulations for the government of gas utilities and gas pipeline safety, 150 CSR 4, effective July 21, 1996.

Rules and regulations for the government of sewer utilities, 150 CSR 5, effective January 2, 1996.

Rules and regulations for the government of telephone utilities, 150 CSR 6, effective October 10, 2000.

Rules and regulations for the government of water utilities, 150 CSR 7, effective February 5, 1996.

Effect of amendment of 2002. — Acts 2002, c. 272, effective June 7, 2002, inserted "fees" following "rates" throughout the section; in the first paragraph, deleted "and regulations" following "needful rules" in the first sentence, inserted a new third sentence, substituted "Where water, sewer, stormwater or gas

services, or any combination thereof" for "Where water, sewer and gas services" in the present fourth sentence; inserted the fifth paragraph; in the present sixth paragraph, inserted "stormwater systems or stormwater management systems" following "sewer facilities" and "stormwater" preceding "or gas bills" in the first sentence.

Effect of amendment of 2003. — Acts 2003, c. 183, effective June 6, 2003, added subsection designations; rewrote present (a)(2) and (c); in (d), substituted "division of health" for "bureau of public health," added "tenant or occupant" to the end of the next-to-last sentence, and added the last sentence; in (f), substituted "gas facilities or stormwater systems or stormwater management programs" for "stormwater systems or stormwater management systems or gas facilities" and added the proviso to the end, and made minor stylistic changes.

§ 16-13A-14. Items included in cost of properties.

The cost of any public service properties acquired under the provisions of this article shall be deemed to include the cost of the acquisition or construction thereof, the cost of all property rights, easements and franchises deemed necessary or convenient therefor and for the improvements and extensions thereto; for stormwater systems and associated stormwater management programs, those activities which include, but are not limited to, water quality improvement activities necessary to comply with all federal and state requirements; interest upon bonds prior to and during construction or acquisition and for six months after completion of construction or of acquisition of the

improvements and extensions; engineering, fiscal agents and legal expenses; expenses for estimates of cost and of revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, and such other expenses as may be necessary or incident to the financing herein authorized, and the construction or acquisition of the properties and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof. (1953, c. 147; 2002, c. 272.)

Effect of amendment of 2002. — Acts "for stormwater systems . . . federal and state requirements" following the first phrase.
2002, c. 272, effective June 7, 2002, inserted

§ 16-13A-18a. Sale, lease or rental of water, sewer, stormwater or gas system by district; distribution of proceeds.

In any case where a public service district owns a water, sewer, stormwater or gas system, and a majority of not less than sixty percent of the members of the public service board thereof deem it for the best interests of the district to sell, lease or rent such water, sewer, stormwater or gas system to any municipality or privately-owned water, sewer, stormwater or gas system, or to any water, sewer, stormwater or gas system owned by an adjacent public service district, the board may so sell, lease or rent such water, sewer, stormwater or gas system upon such terms and conditions as said board, in its discretion, considers in the best interests of the district: Provided, That such sale, lease or rental may be made only upon: (1) The publication of notice of a hearing before the board of the public service district, as a Class I legal advertisement in compliance with the provisions of article three (§§ 59-3-1 et seq.), chapter fifty-nine of this code, in a newspaper published and of general circulation in the county or counties wherein the district is located, such publication to be made not earlier than twenty days and not later than seven days prior to the hearing; (2) approval by the county commission or commissions of the county or counties in which the district operates; and (3) approval by the public service commission of West Virginia.

In the event of any such sale, the proceeds thereof, if any, remaining after payment of all outstanding bonds and other obligations of the district, shall be equitably distributed to any persons who have made contributions in aid of construction of such water, sewer, stormwater or gas system, such distribution not to exceed the actual amount of any such contribution, without interest, and any balance of funds thereafter remaining shall be paid to the county commission of the county in which the major portion of such water, sewer, stormwater or gas system is located to be placed in the general funds of such county commission. (1963, c. 75; 1981, c. 124; 1986, c. 81; 1997, c. 160; 2002, c. 272.)

Effect of amendment of 2002. — Acts "stormwater" following "sewer" in the section heading and throughout the section.
2002, c. 272, effective June 7, 2002, inserted

§ 16-13A-24. Acceptance of loans, grants or temporary advances.

Any public service district created pursuant to the provisions of this article is authorized and empowered to accept loans or grants and procure loans or temporary advances evidenced by notes or other negotiable instruments issued in the manner, and subject to the privileges and limitations, set forth with respect to bonds authorized to be issued under the provisions of this article, for the purpose of paying part or all of the cost of construction or acquisition of water systems, sewage systems, stormwater systems or stormwater management systems or gas facilities, or all of these, and the other purposes herein authorized, from any authorized agency or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual, which loans or temporary advances including the interest thereon, may be repaid out of the proceeds of the bonds authorized to be issued under the provisions of this article, the revenues of the said water system, sewage system, stormwater system or associated stormwater management system or gas facilities, or grants to the public service district from any authorized agency or from the United States of America or any federal or public agency or department of the United States or from any private agency, corporation or individual or from any combination of such sources of payment, and to enter into the necessary contracts and agreements to carry out the purposes hereof with any authorized agency or the United States of America or any federal or public agency or department of the United States, or with any private agency, corporation or individual. Any other loans or temporary advances may be paid from the proceeds thereof until the maturity of such notes or other negotiable instrument. (1958, c. 14; 1980, c. 60; 1981, c. 124; 1986, c. 118; 2002, c. 272.)

Effect of amendment of 2002. — Acts 2002, c. 272, effective June 7, 2002, inserted "stormwater systems or stormwater manage-

ment systems" and "stormwater system or associated stormwater management system".

§ 16-13A-25. Borrowing and bond issuance; procedure.

(a) Notwithstanding any other provisions of this article to the contrary, a public service district may not borrow money, enter into contracts for the provision of engineering, design or feasibility studies, issue or contract to issue revenue bonds or exercise any of the powers conferred by the provisions of section thirteen [§ 16-13A-13], twenty [§ 16-13A-20] or twenty-four [§ 16-13A-24] of this article, without the prior consent and approval of the public service commission.

(b) The public service commission may waive the provision of prior consent and approval for entering into contracts for engineering, design or feasibility studies pursuant to this section for good cause shown which is evidenced by the public service district filing a request for waiver of this section stated in a letter directed to the commission with a brief description of the project, a verified statement by the board members that the public service district has complied

chapter five-g [§§ 5G-1-1 et seq.] of this code, and further explanation of

ability to evaluate their own engineering contract, including, but not limited

(1) Experience with the same engineering firm; or (2) completion of a

construction project requiring engineering services. The district shall also

forward an executed copy of the engineering contract to the commission after

obtaining approval of the waiver.

(b) An engineering contract that meets one or more of the following criteria

is exempt from the waiver or approval requirements:

(1) A contract with a public service district that is a Class A utility on the

first day of April, two thousand three, or subsequently becomes a Class A

utility as defined by commission rule;

(2) A contract with a public service district that does not require borrowing

and that can be paid out of existing rates;

(3) A contract where the payment of engineering fees are contingent upon

the receipt of funding, and commission approval of the funding, to construct

the project which is the subject of the contract; or

(4) A contract that does not exceed fifteen thousand dollars.

(d) Requests for approval or waivers of engineering contracts shall be

deemed granted thirty days after the filing date unless the staff of the public

service commission or a party files an objection to the request. If an objection

is filed, the public service commission shall issue its decision within one

hundred twenty days of the filing date. In the event objection is received to a

request for a waiver, the application shall be considered a request for waiver as

well as a request for approval in the event a waiver is not appropriate.

(e) Unless the properties to be constructed or acquired represent ordinary

extensions or repairs of existing systems in the usual course of business, a

public service district must first obtain a certificate of public convenience and

necessity from the public service commission in accordance with the provisions

of chapter twenty-four [§§ 16-24-1 et seq.] of this code, when a public service

district is seeking to acquire or construct public service property.

Thirty days prior to making formal application for the certificate, the public

service district shall prefile with the public service commission its plans and

supporting information for the project in a manner prescribed by public service

commission rules and regulations. (1969, 1st Ex. Sess., c. 6; 1981, c. 124; 1986,

c. 81; 1996, c. 213; 1997, c. 159; 2003, c. 184.)

Effect of amendment of 2003. — Acts

2003, c. 184, effective June 5, 2003, added

subsection designations: inserted (c) and (d); in

(b), substituted "a verified statement by the

board members that the public service district

has complied" for "evidence of compliance," de-

leted "in the past two years requiring engineer-

ing services" from the end of subdivision (1),

and deleted "within the past two years" preced-

ing "requiring engineering services" in subdivi-

sion (2); and rewrote the final paragraph of the

section, deleting former subdivisions (a)

through (e) regarding requirements for legal

advertisements giving public notice of projects.

ALR references. — Remedies for sewage

treatment plant alleged or deemed to be nui-

sance, 101 ALR5th 287.

S HB 3045

FILED

2005 APR 29 A 11:31

WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2005

ENROLLED

House Bill No. 3045

(By Delegates Boggs and Browning)

Passed April 9, 2005

In Effect Ninety Days from Passage

FILED
2005 APR 29 A 11:31
WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

H. B. 3045

(BY DELEGATES BOGGS AND BROWNING)

[Passed April 9, 2005, in effect ninety days from passage]

AN ACT to amend and reenact §16-13A-2 of the Code of West Virginia, 1931, as amended, relating to the creation and modification of public service districts: requiring the county commission to provide the Public Service Commission a copy of the order or petition seeking the creation, modification or dissolution of a public service district, as well as the time of the hearing to be held by the county commission: providing that the Public Service Commission may conduct a hearing in the affected county on the matter.

Be it enacted by the Legislature of West Virginia:

That §16-13A-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE
AND GAS SERVICES.**

§16-13A-2. Creation of districts by county commission; enlarging, reducing, merging, or dissolving district; consolidation; agreements, etc.: infringing upon powers

**of county commission; filing list of members and
districts with the Secretary of State.**

1 (a) The county commission of any county may propose the
2 creation, enlargement, reduction, merger, dissolution, or
3 consolidation of a public service district by any of the following
4 methods: (1) On its own motion by order duly adopted, (2)
5 upon the recommendation of the Public Service Commission,
6 or (3) by petition of twenty-five percent of the registered voters
7 who reside within the limits of the proposed public service
8 district within one or more counties. The petition shall contain
9 a description, including metes and bounds, sufficient to identify
10 the territory to be embraced therein and the name of such
11 proposed district: *Provided*, That after the effective date of this
12 section, no new public service district shall be created, en-
13 larged, reduced, merged, dissolved or consolidated under this
14 section without the written consent and approval of the Public
15 Service Commission, which approval and consent shall be in
16 accordance with rules promulgated by the Public Service
17 Commission and may only be requested after consent is given
18 by the appropriate county commission or commissions pursuant
19 to this section. Any territory may be included regardless of
20 whether or not the territory includes one or more cities,
21 incorporated towns or other municipal corporations which own
22 and operate any public service properties and regardless of
23 whether or not it includes one or more cities, incorporated
24 towns or other municipal corporations being served by privately
25 owned public service properties: *Provided, however*, That the
26 same territory shall not be included within the boundaries of
27 more than one public service district except where the territory
28 or part thereof is included within the boundaries of a separate
29 public service district organized to supply water, sewerage
30 services, stormwater services or gas facilities not being fur-
31 nished within such territory or part thereof: *Provided further*,
32 That no city, incorporated town or other municipal corporation
33 shall be included within the boundaries of the proposed district

137 and approval by the Public Service Commission. The Public
138 Service Commission may provide a hearing in the affected
139 county on the matter and may approve, reject or modify the
140 order of the county commission if it finds it is in the best
141 interests of the public to do so. The Public Service Commission
142 shall adopt rules relating to such filings and the approval,
143 disapproval or modification of county commission orders for
144 creating, enlarging, merging, dissolving or consolidating
145 districts. The provisions of this section shall not apply to the
146 implementation by a county commission of an order issued by
147 the Public Service Commission pursuant to this section and
148 section one-b, of this article.

149 (g) The county commission may, if in its discretion it
150 deems it necessary, feasible and proper, enlarge the district to
151 include additional areas, reduce the area of the district, where
152 facilities, equipment, service or materials have not been
153 extended, or dissolve the district if inactive or create or consoli-
154 date two or more such districts. If consolidation of districts is
155 not feasible, the county commission may consolidate and
156 centralize management and administration of districts within its
157 county or multi-county area to achieve efficiency of operations:
158 *Provided*, That where the county commission determines on its
159 own motion by order entered of record, or there is a petition to
160 enlarge the district, merge and consolidate districts, or the
161 management and administration thereof, reduce the area of the
162 district or dissolve the district if inactive, all of the applicable
163 provisions of this article providing for hearing, notice of
164 hearing and approval by the Public Service Commission shall
165 apply. The Commission shall at all times attempt to bring about
166 the enlargement or merger of existing public service districts in
167 order to provide increased services and to eliminate the need for
168 creation of new public service districts in those areas which are
169 not currently serviced by a public service district: *Provided*,
170 *however*, That where two or more public service districts are
171 consolidated pursuant to this section, any rate differentials may

34 except upon the adoption of a resolution of the governing body
35 of the city, incorporated town or other municipal corporation
36 consenting.

37 (b) The petition shall be filed in the office of the clerk of
38 the county commission of the county in which the territory to
39 constitute the proposed district is situated, and if the territory is
40 situated in more than one county, then the petition shall be filed
41 in the office of the clerk of the county commission of the
42 county in which the major portion of the territory extends, and
43 a copy thereof (omitting signatures) shall be filed with each of
44 the clerks of the county commission of the other county or
45 counties into which the territory extends. The clerk of the
46 county commission receiving such petition shall present it to
47 the county commission of the county at the first regular meeting
48 after the filing or at a special meeting called for the consider-
49 ation thereof.

50 (c) When the county commission of any county enters an
51 order on its own motion proposing the creation, enlargement,
52 reduction, merger, dissolution or consolidation of a public
53 service district, as aforesaid, or when a petition for the creation
54 is presented, as aforesaid, the county commission shall at the
55 same session fix a date of hearing in the county on the creation,
56 enlargement, reduction, merger, dissolution or consolidation of
57 the proposed public service district, which date so fixed shall be
58 not more than forty days nor less than twenty days from the
59 date of the action. Within ten days of fixing the date of hearing,
60 the county commission shall provide the Executive Secretary of
61 the Public Service Commission with a copy of the order or
62 petition and notification of the time and place of the hearing to
63 be held by the county commission. If the territory proposed to
64 be included is situated in more than one county, the county
65 commission, when fixing a date of hearing, shall provide for
66 notifying the county commission and clerk thereof of each of
67 the other counties into which the territory extends of the date so

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

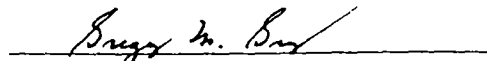

Chairman Senate Committee

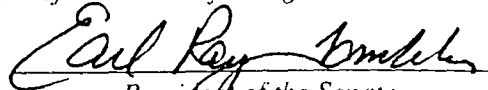

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

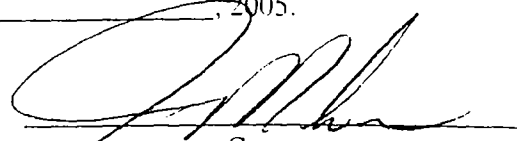

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within as reported this the 29th
day of April, 2005.


Governor

172 continue for the period of bonded indebtedness incurred prior
173 to consolidation. The districts may not enter into any agree-
174 ment, contract or covenant that infringes upon, impairs,
175 abridges or usurps the duties, rights or powers of the county
176 commission, as set forth in this article, or conflicts with any
177 provision of this article.

178 (h) A list of all districts and their current board members
179 shall be filed by the county commission with the Secretary of
180 State and the Public Service Commission by the first day of
181 July of each year.

PRESENTED TO THE
GOVERNOR

APR 26 2005

Time 11:05 PM

5 HB 3280

FILED

2005 MAY -4 P 4:17

STATE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2005

ENROLLED

House Bill No. 3280

(By Delegates Staton, Browning, Pino, Varner,
Ennis, Yost and DeLong)

Passed April 9, 2005

In Effect Ninety Days from Passage

FILED
2005 MAY -4 P 4:17
WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

H. B. 3280

(BY DELEGATES STATON, BROWNING, PINO, VARNER,
ENNIS, YOST AND DELONG)

[Passed April 9, 2005; in effect ninety days from passage]

AN ACT to amend and reenact §16-13A-25 of the Code of West Virginia, 1931, as amended; and to amend and reenact §24-2-11 of said code, all relating to modifying the review by the Public Service Commission of public convenience and necessity applications where the project has been approved by Infrastructure and Jobs Development Council; removing the necessity for public service districts to prefile with the public service commission; providing for a waiver of thirty day notice requirement for projects approved by the Infrastructure and Jobs Development Council; providing that the public service commission render a final decision on infrastructure and jobs development council approved applications; providing that infrastructure and jobs development council approved projects receiving a certificate of public convenience may not be compelled to reopen; and allowing electric power projects to apply for and receive certain licenses and permits.

Be it enacted by the Legislature of West Virginia:

That §16-13A-25 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that §24-2-11 of said code be amended and reenacted, all to read as follows:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 13A. PUBLIC SERVICE DISTRICTS.

§16-13A-25. Borrowing and bond issuance; procedure.

1 (a) Notwithstanding any other provisions of this article to
2 the contrary, a public service district may not borrow money,
3 enter into contracts for the provision of engineering, design or
4 feasibility studies, issue or contract to issue revenue bonds or
5 exercise any of the powers conferred by the provisions of
6 section thirteen, twenty or twenty-four of this article, without
7 the prior consent and approval of the Public Service Commis-
8 sion.

9 (b) The Public Service Commission may waive the provi-
10 sion of prior consent and approval for entering into contracts for
11 engineering, design or feasibility studies pursuant to this section
12 for good cause shown which is evidenced by the public service
13 district filing a request for waiver of this section stated in a
14 letter directed to the commission with a brief description of the
15 project, a verified statement by the board members that the
16 public service district has complied with chapter five-g of this
17 code, and further explanation of ability to evaluate their own
18 engineering contract, including, but not limited to:

19 (1) Experience with the same engineering firm; or

20 (2) completion of a construction project requiring engineer-
21 ing services. The district shall also forward an executed copy of
22 the engineering contract to the commission after receiving
23 approval of the waiver.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-11. Requirements for certificate of public convenience and necessity.

1 (a) No public utility, person or corporation shall begin the
2 construction of any plant, equipment, property or facility for
3 furnishing to the public any of the services enumerated in
4 section one, article two of this chapter, nor apply for, nor obtain
5 any franchise, license or permit from any municipality or other
6 governmental agency, except ordinary extensions of existing
7 systems in the usual course of business, unless and until it shall
8 obtain from the Public Service Commission a certificate of
9 public convenience and necessity authorizing such construction
10 franchise, license or permit.

11 (b) Upon the filing of any application for such certificate,
12 and after hearing, the commission may, in its discretion, issue
13 or refuse to issue, or issue in part and refuse in part, such
14 certificate of convenience and necessity: *Provided*, That the
15 commission, after it gives proper notice and if no protest is
16 received within thirty days after the notice is given, may waive
17 formal hearing on the application. Notice shall be given by
18 publication which shall state that a formal hearing may be
19 waived in the absence of protest, made within thirty days, to the
20 application. The notice shall be published as a Class I legal
21 advertisement in compliance with the provisions of article
22 three, chapter fifty-nine of this code. The publication area shall
23 be the proposed area of operation.

24 (c) Any public utility, person or corporation subject to the
25 provisions of this section shall give the commission at least
26 thirty days' notice of the filing of any such application for a
27 certificate of public convenience and necessity under this
28 section: *Provided*, That the commission may modify or waive

24 (c) An engineering contract that meets one or more of the
25 following criteria is exempt from the waiver or approval
26 requirements:

27 (1) A contract with a public service district that is a Class
28 A utility on the first day of April, two thousand three, or
29 subsequently becomes a Class A utility as defined by commis-
30 sion rule:

31 (2) A contract with a public service district that does not
32 require borrowing and that can be paid out of existing rates:

33 (3) A contract where the payment of engineering fees are
34 contingent upon the receipt of funding, and commission
35 approval of the funding, to construct the project which is the
36 subject of the contract; or

37 (4) A contract that does not exceed fifteen thousand dollars.

38 (d) Requests for approval or waivers of engineering
39 contracts shall be deemed granted thirty days after the filing
40 date unless the staff of the Public Service Commission or a
41 party files an objection to the request. If an objection is filed,
42 the Public Service Commission shall issue its decision within
43 one hundred twenty days of the filing date. In the event
44 objection is received to a request for a waiver, the application
45 shall be considered a request for waiver as well as a request for
46 approval in the event a waiver is not appropriate.

47 (e) Unless the properties to be constructed or acquired
48 represent ordinary extensions or repairs of existing systems in
49 the usual course of business, a public service district must first
50 obtain a certificate of public convenience and necessity from
51 the Public Service Commission in accordance with the provi-
52 sions of chapter twenty-four of this code, when a public service
53 district is seeking to acquire or construct public service prop-
54 erty.

60 (h) The commission shall prescribe such rules as it may
61 deem proper for the enforcement of the provisions of this
62 section; and, in establishing that public convenience and
63 necessity do exist, the burden of proof shall be upon the
64 applicant.

65 (i) Pursuant to the requirements of this section the commis-
66 sion may issue a certificate of public convenience and necessity
67 to any intrastate pipeline, interstate pipeline, or local distribu-
68 tion company for the transportation in intrastate commerce of
69 natural gas used by any person for one or more uses, as defined,
70 by rule, by the commission in the case of

71 (1) Natural gas sold by a producer, pipeline or other seller
72 to such person; or

73 (2) Natural gas produced by such person.

74 (j) A public utility which has received a certificate of public
75 convenience and necessity from the commission and has been
76 approved by the infrastructure and jobs development council,
77 is not required to, and cannot be compelled to, reopen the
78 proceeding if the cost of the project changes but the change
79 does not effect the rates established for the project.

80 (k) Any public utility, person or corporation proposing any
81 electric power project that requires a certificate under this
82 section is not required to obtain such certificate before applying
83 for or obtaining any franchise, license or permit from any
84 municipality or other governmental agency.

29 the thirty-day notice requirement and shall waive the thirty day
30 notice requirement for projects approved by the infrastructure
31 and jobs development council.

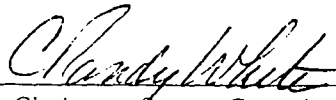
32 (d) The commission shall render its final decision on any
33 application filed under the provisions of this section or section
34 eleven-a of this article within two hundred seventy days of the
35 filing of the application and within ninety days after final
36 submission of any such application for decision following a
37 hearing:

38 (e) The commission shall render its final decision on any
39 application filed under the provisions of this section that has
40 received the approval of the Infrastructure and Jobs Develop-
41 ment Council pursuant to article fifteen-A of chapter thirty-one
42 of this code, within one hundred-eighty days after filing of the
43 application: *Provided*, That if a protest is received within thirty
44 days after the notice is provided pursuant to subsection (b), the
45 commission shall render its final decision within two hundred
46 seventy days of the filing of the application.

47 (f) If the projected total cost of a project which is the
48 subject of an application filed pursuant to this section or section
49 eleven-a of this article is greater than fifty million dollars, the
50 commission shall render its final decision on any such applica-
51 tion filed under the provisions of this section or section eleven-
52 a of this article within four hundred days of the filing of the
53 application and within ninety days after final submission of any
54 such application for decision after a hearing.

55 (g) If a decision is not rendered within the aforementioned
56 one hundred eighty-days, two hundred seventy days, four
57 hundred days or ninety days, the commission shall issue a
58 certificate of convenience and necessity as applied for in the
59 application.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee

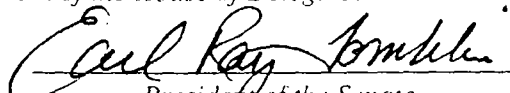

Chairman House Committee

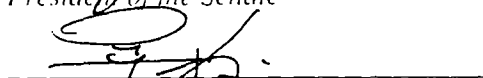
Originating in the House.

In effect ninety days from passage.

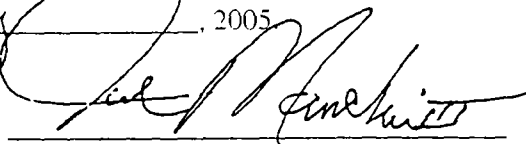

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within approved this the 4th
day of May, 2005


Governor

PRESENTED TO THE
GOVERNOR

APR 26 2005

Time

11:05 PM

S SB 749

FILED

2005 APR 28 P 5:01

WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2005

ENROLLED

SENATE BILL NO. 749

(By Senator Helmick, et al)

PASSED April 8, 2005

In Effect 90 days from Passage

72 (e) The board shall by resolution determine its own rules
73 of procedure, fix the time and place of its meetings and the
74 manner in which special meetings may be called. Public
75 notice of meetings shall be given in accordance with
76 section three, article nine-a, chapter six of this code.
77 Emergency meetings may be called as provided for by said
78 section. A majority of the members constituting the board
79 also constitute a quorum to do business.

80 (f) The members of the board are not personally liable or
81 responsible for any obligations of the district or the board,
82 but are answerable only for willful misconduct in the
83 performance of their duties. The county commission
84 which created a district or county commissions if more
85 than one created the district may, upon written request of
86 the district, adopt an order changing the official name of
87 a public service district: *Provided*, That such name change
88 will not be effective until approved by the public service
89 commission of West Virginia and the owners of any bonds
90 and notes issued by the district, if any, shall have con-
91 sented, in writing, to the name change. If a district
92 includes territory located in more than one county, the
93 county commission or county commissions changing the
94 name of the district shall provide any county commission
95 into which the district also extends with a certified copy
96 of the order changing the name of the district. The official
97 name of any district created under the provisions of this
98 article may contain the name or names of any city, incor-
99 porated town or other municipal corporation included
100 therein or the name of any county or counties in which it
101 is located.

FILED

2005 APR 28 P 5:01

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

Senate Bill No. 749

(BY SENATORS HELMICK, SHARPE, CHAFIN, PLYMALE, PREZIOSO,
EDGELL, LOVE, BAILEY, BOWMAN, MCCABE, UNGER, MINEAR,
BOLEY, FACEMYER, YODER, GUILLS AND SPROUSE)

[Passed April 8, 2005; in effect ninety days from passage.]

AN ACT to amend and reenact §16-13A-4 of the Code of West Virginia, 1931, as amended, authorizing a change in the official name of a public service district in certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §16-13A-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE,
STORMWATER AND GAS SERVICES.**

§16-13A-4. Board chairman; members' compensation; procedure; district name.

- 1 (a) The chairman shall preside at all meetings of the
- 2 board and may vote as any other member of the board. If
- 3 the chairman is absent from any meeting, the remaining

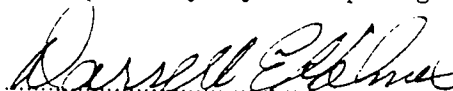
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

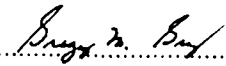

Chairman Senate Committee

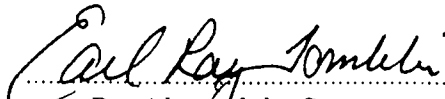

Chairman House Committee

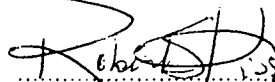
Originated in the Senate.

In effect ninety days from passage.

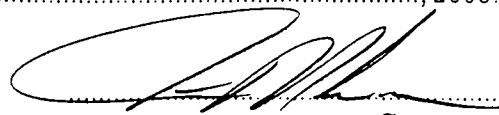

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker House of Delegates

The within enrolled this the 28th
Day of April, 2005.


Governor

PRESENTED TO THE
GOVERNOR

APR 20 2005

Time 3:00 pm

State of West Virginia



Certificate

*I, Betty Ireland, Secretary of State of the
State of West Virginia, hereby certify that*

**THIS IS A TRUE COPY OF CHAPTER 31, ARTICLE 15A OF THE WEST
VIRGINIA CODE AND SB 428 PASSED APRIL 9, 2005 AND EFFECTIVE
FROM JULY 8, 2005 AS INDICATED BY THE RECORDS OF THIS OFFICE.**



*Given under my hand and the
Great Seal of the State of
West Virginia on*

September 13, 2005

Betty Ireland
Secretary of State

ARTICLE 15A.

**WEST VIRGINIA INFRASTRUCTURE AND JOBS
DEVELOPMENT COUNCIL.**

- | | |
|--|---|
| <p>Sec.
31-15A-1. Short title.
31-15A-2. Definitions.
31-15A-3. West Virginia infrastructure and jobs development council continued; members of council; staff of council.
31-15A-4. Development of guidelines and preliminary application for funding assistance.
31-15A-5. Requirements for project funding assistance; review of project preliminary applications by council.
31-15A-6. Powers, duties and responsibilities of the council generally; comprehensive assessment.
31-15A-7. Current and prospective planning; roads and highways; report to division of highways.
31-15A-8. Exemption of certain emergency projects from certificate of public convenience and necessity requirements; review of certain emergency projects by public service commission; and exemption for North Fork Hughes River watershed project.
31-15A-9. Infrastructure fund; deposits in fund; disbursements to provide loans, loan guarantees, grants and other assistance; loans, loan guarantees, grants and other assistance shall be subject to assistance agreements.
31-15A-10. Recommendations by council for expenditures of funds by loan, grant or for engineering assistance.
31-15A-11. Reservation of funds for projects and infrastructure projects.
31-15A-12. Additional powers of water development authority.</p> | <p>Sec.
31-15A-13. Prohibition on funds inuring to the benefit of or being distributable to water development board; transactions between the water development board and officers having certain interests in such transactions.
31-15A-14. Termination or dissolution.
31-15A-15. Projects not to be considered public improvements; competitive bid requirements.
31-15A-16. Dedication of severance tax proceeds.
31-15A-17. Water development authority empowered to issue infrastructure revenue bonds and refunding bonds; creation of infrastructure revenue debt service fund; funding of infrastructure revenue debt service fund; requirements and manner of such issuance.
31-15A-17a. Infrastructure revenue bonds payable from A. James Manchin fund.
31-15A-18. Trustee for holders of infrastructure revenue bonds; contents of trust agreement.
31-15A-19. Legal remedies of infrastructure revenue bondholders or noteholders and trustees.
31-15A-20. Infrastructure revenue bonds lawful investments.
31-15A-21. Purchase and cancellation of infrastructure revenue bonds.
31-15A-22. Refunding revenue bonds.
31-15A-23. Infrastructure revenue bonds not debt of state, county, municipality or any political subdivision.
31-15A-24. Infrastructure revenue bonds exempt from taxation.</p> |
|--|---|

§ 31-15A-1. Short title.

This article shall be known and may be cited as the "West Virginia Infrastructure and Jobs Development Act." (1994, 1st Ex. Sess., c. 26.)

Cited in State ex rel. Cooper v. Caperton, 196 W. Va. 208, 470 S.E.2d 162 (1996).

§ 31-15A-2. Definitions.

For purposes of this article:

(a) "Bond" or "infrastructure revenue bond" means a revenue bond, note, or other obligation issued by the water development authority pursuant to this article, including bonds to refund such bonds and notes to renew such notes, and notes in anticipation of and payable from the proceeds of such bonds.

(b) "Code" means the code of West Virginia, one thousand nine hundred thirty-one, as amended;

(c) "Cost" means, as applied to any project to be financed, in whole or in part, with infrastructure revenues or funds otherwise provided pursuant to this article, the cost of planning, acquisition, improvement and construction of the project; the cost of preliminary design and analysis, surveys, borings; the cost of environmental, financial, market and engineering feasibility studies, assessments, applications, approvals, submissions or clearances; the cost of preparation of plans and specifications and other engineering services; the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights and any other interests required for the acquisition, repair, improvement or construction of the project; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which buildings or structures may be moved; the cost of excavation, grading, shaping or treatment of earth, demolishing or removing any buildings or structures; the cost of constructing any buildings or other improvements; the cost of all pumps, tanks, vehicles, apparatus and other machinery, furnishings and equipment; loan or origination fees and all finance charges and interest incurred prior to and during the construction and for no more than six months after completion of construction; the cost of all legal services and expenses; the cost of all plans, specifications, surveys and estimates of cost; all working capital and other expenses necessary or incident to determining the feasibility or practicability of acquiring, repairing, improving or constructing any project; the cost of placing any project in operation; and all other costs and expenses of any kind or nature incurred or to be incurred by the project sponsor developing the project that are reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project: Provided, That costs shall not include any amounts related to the ongoing operations of the owner or operator, depreciation thereof or any other cost which the council or the water development authority has not determined to be consistent with the purposes and objectives of this article;

(d) "Council" means the West Virginia infrastructure and jobs development council created in section three [§ 31-15A-3] of this article;

(e) "Division of environmental protection" means the division [department] of environmental protection established under article one [§§ 22-1-1 et seq.], chapter twenty-two of this code, or any successor to all or any substantial part of its powers and duties;

(f) "Division of health" means the division of health created in article one [§§ 16-1-1 et seq.], chapter sixteen of this code, or any successor to all or any substantial part of its powers and duties;

(g) "Economic development authority" means the economic development authority established under article fifteen [§§ 31-15-1 et seq.], chapter thirty-one of the code, or any successor to all or any substantial part of its powers and duties;

(h) "Emergency project" means a project which the council has determined: (1) Is essential to the immediate economic development of an area of the state; and (2) will not likely be developed in that area if construction of the project is not commenced immediately;

(i) "Governmental agency" means any county; municipality; watershed improvement district; assessment district; soil conservation district; sanitary district; public service district; drainage district; regional governmental authority and any other state governmental agency, entity, political subdivision or public corporation or agency authorized to acquire, construct or operate water or wastewater facilities or infrastructure projects;

(j) "Housing development fund" means the West Virginia housing development fund established under article eighteen [§§ 31-18-1 et seq.] of this chapter, or any successor to all or any substantial part of its powers and duties;

(k) "Infrastructure fund" means the West Virginia infrastructure fund created and established in section nine [§ 31-15A-9] of this article;

(l) "Infrastructure project" means a project in the state which the council determines is likely to foster and enhance economic growth and development in the area of the state in which the project is developed, for commercial, industrial, community improvement or preservation or other proper purposes, including, without limitation, tourism and recreational housing, land, air or water transportation facilities and bridges, industrial or commercial projects and facilities, mail order, warehouses, wholesale and retail sales facilities and other real and personal properties, including facilities owned or leased by this state or any other project sponsor, and includes, without limitation: (1) The process of acquiring, holding, operating, planning, financing, demolition, construction, improving, expanding, renovation, leasing or otherwise disposing of the project or any part thereof or interest therein; and (2) preparing land for construction and making, installing or constructing improvements on the land, including water or wastewater facilities or any part thereof, steam, gas, telephone and telecommunications and electric lines and installations, roads, bridges, railroad spurs, buildings, docking and shipping facilities, curbs, gutters, sidewalks, and drainage and flood control facilities, whether on or off the site;

(m) "Infrastructure revenue" means all amounts appropriated by the Legislature; all amounts deposited into the infrastructure fund; any amounts received, directly or indirectly, from any source for the use of all or any part of any project completed pursuant to this article; and any other amounts received by the state treasurer, council or the water development authority for the purposes of this article;

(n) "Need of the project sponsors" means there is a public need for a project. The council shall construe a population increase evidenced by the last two decennial censuses in a county in which a project is proposed, as a factor supporting the conclusion that a need exists for projects in that county.

(o) "Project" means any wastewater facility, water facility project or any combination thereof, constructed or operated or to be constructed or operated by a project sponsor;

(p) "Project sponsor" means any governmental agency or person, or any combination thereof, including, but not limited to, any public utility, which intends to plan, acquire, construct, improve or otherwise develop a project;

(q) "Public service commission" means the public service commission of West Virginia created and established under section three [§ 24-1-3], article one, chapter twenty-four of this code, or any successor to all or any substantial part of its powers and duties;

(r) "Person" means any individual, corporation, partnership, association, limited liability company or any other form of business organization;

(s) "Public utility" means any person or persons, or association of persons, however associated, whether incorporated or not, including, without limitation, any governmental agency, operating a wastewater facility or water facility as a public service, which is regulated by the public service commission as a public utility under chapter twenty-four [§§ 24-1-1 et seq.] of this code or which is required to file its tariff with the public service commission;

(t) "State development office" means the West Virginia development office established under article two [§§ 5B-2-1 et seq.], chapter five-b of this code, or any successor to all or any substantial part of its powers and duties;

(u) "State infrastructure agency" means the division of health, division of environmental protection, housing development fund, public service commission, state development office, water development authority, economic development authority and any other state agency, division, body, authority, commission, instrumentality or entity which now or in the future receives applications for the funding of, and provides funding or technical assistance to, the planning, acquisition, construction or improvement of a project;

(v) "Waste water facility" means all facilities, land and equipment used for or in connection with treating, neutralizing, disposing of, stabilizing, cooling, segregating or holding waste water, including, without limitation, facilities for the treatment and disposal of sewage, industrial wastes or other wastes, wastewater, and the residue thereof; facilities for the temporary or permanent impoundment of wastewater, both surface and underground; and sanitary sewers or other collection systems, whether on the surface or underground, designed to transport wastewater together with the equipment and furnishings therefor or thereof and their appurtenances and systems, whether on the surface or underground including force mains and pumping facilities therefor;

(w) "Water development authority" means the West Virginia water development authority continued pursuant to the provisions of article one [§§ 22C-1-1 et seq.], chapter twenty-two-c of this code, or any successor to all or any substantial part of its powers and duties; and

(x) "Water facility" means all facilities, land and equipment used for or in connection with the collection and/or storage of water, both surface and underground, transportation of water, storage of water, treatment of water and distribution of water all for the purpose of providing potable, sanitary water suitable for human consumption and use. (1994, 1st Ex. Sess., c. 26; 1998, c. 180.)

§ 31-15A-3. West Virginia infrastructure and jobs development council continued; members of council; staff of council.

(a) The West Virginia infrastructure and jobs development council is hereby continued. The council is a governmental instrumentality of the state. The exercise by the council of the powers conferred by this article and the carrying out of its purpose and duties shall be considered and held to be, and are hereby determined to be, essential governmental functions and for a public purpose.

(b) The council shall consist of eleven members, including the executive director of the housing development fund or his or her designee, the director of the division of environmental protection or his or her designee, the director of the economic development authority or his or her designee, the director of the water development authority or his or her designee, the executive director of the state development office or his or her designee, the director of the division of health or his or her designee, the chairman of the public service commission or his or her designee, and four members representing the general public: Provided, That there shall be at least one member representing the general public from each congressional district: Provided, however, That after the expiration of the term of office of the members first appointed as representatives of the general public, no more than one member representing the general public may be a resident of the same county. The governor shall appoint the public members of the council who shall serve three-year staggered terms. The commissioner of the division of highways, the executive director of the state rail authority, two members of the West Virginia Senate, two members of the West Virginia House of Delegates, one representative of the board of directors of the state college system and one representative of the board of trustees of the university of West Virginia shall serve as advisory members of the council. The governor shall appoint the legislative members of the council: Provided, further, That no more than three of the legislative members may be of the same political party. The governor shall appoint the representatives of the governing boards from a list of three names submitted by each governing board. The advisory members shall be ex officio, nonvoting members of the council.

(c) The council shall annually elect one of its members as chairman, and shall appoint a secretary, who need not be a member of the council and who shall keep records of its proceedings. Six members of the council shall constitute a quorum and the affirmative vote of at least the majority of those members present shall be necessary for any action taken by vote of the council. No vacancy in the membership of the council impairs the rights of a quorum by such vote to exercise all the rights and perform all the duties of the council.

(d) No member of the council who serves by virtue of his or her office shall receive any compensation or reimbursement of expenses for serving as a member. The members of the council who represent the general public shall receive reimbursement for actual expenses incurred in the service of the council.

(e) The council shall meet at least monthly to review projects and infrastructure projects requesting funding assistance and otherwise to conduct its

business, and shall meet more frequently if necessary. Notwithstanding any other provision of this article to the contrary, the economic development authority shall not be subject to council review with regard to any action taken pursuant to the authority established in article fifteen [§§ 31-15-1 et seq.], chapter thirty-one of this code nor shall the governor's civil contingent fund be subject to council review with regard to projects or infrastructure projects funded through the governor's civil contingent fund.

(f) The water development authority shall provide office space for the council, and each governmental agency represented on the council shall provide staff support for the council in the manner determined by the council from time to time.

(g) The council shall invite to all its meetings one or more representatives of the United States department of agriculture, rural economic community development, the United States economic development agency and the United States army corps of engineers or any successors thereto. The council shall also invite such other appropriate parties as may be necessary to effectuate the purposes of this article. (1994, 1st Ex. Sess., c. 26; 1995, c. 130.)

§ 31-15A-4. Development of guidelines and preliminary application for funding assistance.

(a) To implement and carry out the intent of this article, the council shall promulgate legislative rules in accordance with article three [§§ 29A-3-1 et seq.], chapter twenty-nine-a of this code to develop comprehensive, uniform guidelines for use by the council and other state infrastructure agencies in evaluating any request by a project sponsor for funding assistance to plan, acquire, construct, improve or otherwise develop a project or infrastructure project. The guidelines shall include the following factors: (1) the public health benefits of the project or infrastructure project; (2) the economic development benefits of the project or infrastructure project; (3) the degree to which the project or infrastructure project will correct deficiencies in the compliance of water supply or sewage treatment facilities with state or federal laws, regulations or standards; (4) the degree to which the project or infrastructure project encourages effective and efficient consolidation of water or sewage treatment systems consistent with the comprehensive plan developed pursuant to section six [§ 31-15A-6], of this article; (5) the cost effectiveness of the project or infrastructure project as compared with alternatives which achieve substantially the same public health or economic development benefits, including the consideration of providing maximum feasible fire protection; (6) the availability of alternative sources of funding which could finance all or a part of the project and infrastructure project, and the need for the assistance of the council to finance the project or infrastructure project or attract other sources of funding; (7) the applicant's ability to operate and maintain the system if the project or infrastructure project is approved; (8) the degree to which the project or infrastructure project achieves other state or regional planning goals; (9) the estimated date upon which the project or infrastructure project could commence if funding were available and the estimated comple-

tion date of the project or infrastructure project; and (10) such other considerations as the council may consider necessary or appropriate to accomplish the purpose and intent of this article.

(b) The council shall create a preliminary application form which shall be used by all project sponsors requesting funding assistance from state infrastructure agencies to plan, acquire, construct, improve or otherwise develop an infrastructure project or project. The preliminary application form shall contain all information required by all state infrastructure agencies that will be required to issue permits and/or certificates regarding the project or infrastructure project. The preliminary application shall require the project sponsor to set forth the type and proposed location of the infrastructure project or project; the estimated total cost of the project; the amount of funding assistance required and the specific uses of the funding; other sources of funding available or potentially available for the infrastructure project or project; information demonstrating the need for the infrastructure project or project and that the proposed funding of the project is the most economically feasible and viable alternative to completing the project or infrastructure project; and such other information as the council considers necessary to enable it to recommend the type of project or infrastructure project financing, in terms of the kind, amount and source of funding, which the project sponsor should pursue and which the state infrastructure agency or agencies should consider an appropriate investment of public funds, and to otherwise carry out the intent of this article. (1994, 1st Ex. Sess., c. 26.)

Code of State Rules References. — Infrastructure and jobs development council funding rules, 167CSR1, effective June 6, 1996.

§ 31-15A-5. Requirements for project funding assistance; review of project preliminary applications by council.

(a) No project sponsor may apply for or receive any loan, loan guarantee, grant or other funding assistance for a project or infrastructure project from any state infrastructure agency (i) unless the project sponsor requiring the funding assistance first submits a completed preliminary application to the council on the form prepared for such purpose by the council pursuant to section four of this article, and (ii) except as may be recommended by the council after consideration of the preliminary application: *Provided, That any project sponsor which has an infrastructure project or project with either acceptable bids or all funding in place on the effective date of this act is not required to comply with the provisions of this section.*

(b) The council shall, within thirty days of receipt of each completed preliminary application submitted to it, review the preliminary application and either (i) make a written recommendation as to the infrastructure project or project financing, in terms of the kind, amount and source of funding, which the project sponsor submitting the application should pursue and which the state infrastructure agency or agencies should consider an appropriate invest-

ment of public funds, or (ii) if the council determines that (1) the proposed project or infrastructure project is not eligible for funding assistance from any state infrastructure agency, or (2) the proposed project or infrastructure project is not otherwise an appropriate or prudent investment of state funds, the council shall recommend that the project sponsor not seek funding from any state infrastructure agency. A project sponsor shall include the preliminary application and the council's recommendations in any application to a state infrastructure agency.

(c) The council shall provide a copy of its recommendation with respect to each preliminary application, together with a copy of the preliminary application, to all appropriate state infrastructure agencies, which shall take into account the council's recommendations with respect to a project or infrastructure project before taking any action with respect to the project. No state infrastructure agency shall take any action inconsistent with the recommendation of the council unless the governing body of the agency, or the head of the agency if it has no governing body, expressly finds and determines that the recommendation is not in the best interest of the state or the area in which the proposed infrastructure project or project is to be located.

(d) In reviewing each preliminary application, the council shall use the engineering, financial and technical expertise of the respective staffs of the state infrastructure agencies represented on the council so as to recommend for funding those projects or infrastructure projects which are consistent with the purposes and intent of this article and with the policies and priorities of this state generally. The council may include in its findings a recommendation that a state infrastructure agency consider technical reports on the project prepared by other infrastructure agencies or by any federal agency. (1994, 1st Ex. Sess., c. 26.)

Code of State Rules References. — Infrastructure and jobs development council funding rules, 167 CSR 1, effective June 6, 1996.

§ 31-15A-6. Powers, duties and responsibilities of the council generally; comprehensive assessment.

(a) In addition to the powers set forth elsewhere in this article, the council is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate the purposes and intent of this article. The council shall have the power and capacity to:

(1) Provide consultation services to project sponsors in connection with the planning, acquisition, improvement, construction or development of any infrastructure project or project;

(2) Periodically prepare a list of infrastructure projects or projects which cannot meet the established funding guidelines of the various state infrastructure agencies, other than the housing development fund, but which are consistent with the mandates of this article and recommend to the water development authority that it make a grant or loan to the project sponsors

from the infrastructure fund to finance the cost of one or more such projects or infrastructure projects;

(3) Do all other acts necessary and proper to carry out the powers expressly granted to the authority in this article; and

(4) To make and execute contracts, commitments and obligations and other instruments necessary or convenient for the exercise of its powers.

(b) The council shall develop a comprehensive statewide inventory of water supply systems and sewage treatment systems and an assessment of current and future needs by the first day of July, one thousand nine hundred ninety-six. The assessment shall identify the areas of the state which do not have adequate public water or sewage systems and offer recommendations for the construction of new facilities or the extension or expansion of existing facilities to meet the identified needs. The council shall include in the assessment an identification of the obstacles, issues and problems which prevent or inhibit development of adequate infrastructure throughout the state, including financial, governmental, physical, or geographical factors and make recommendation as the council considers appropriate regarding the obstacles, issues or problems identified. This comprehensive inventory and assessment shall be updated at least once in every three year period after the initial assessment and inventory is completed.

(c) The council shall study the viability of the consolidation of public service districts throughout the state: Provided, That the study shall encompass not only public service districts but also any and all entities which provide or supply water and sewer service to the general public: Provided, however, That the council shall, in the preparation of the study, consult with the public service district division of the public service commission and representatives of the West Virginia rural water association and the West Virginia association of public service districts, as needed. The council shall report their findings and conclusions on or before the sixteenth of January of the year one thousand nine hundred ninety-five to the governor, speaker of the house of delegates and president of the senate. (1994, 1st Ex. Sess., c. 26.)

§ 31-15A-7. Current and prospective planning; roads and highways; report to division of highways.

(a) The council shall take into account the current and prospective infrastructure needs in relation to plans of the division of highways for the development and building of new roads. Upon completion an environmental impact study, the commissioner of highways shall provide the council with plans for any and all new roads. In a timely manner, the council shall advise the commissioner of the division of highways on the feasibility of the expansion of new or existing water and sewer lines concomitant to the construction of the new roads.

(b) The council has the authority to appoint local infrastructure planning teams. The local infrastructure planning teams may consist of the following: A designee of the division of highways from the region where the new road is being built; a designee of the division of highways from the central state office;

a designee from the environmental engineers division of the department of health and human resources; a designee from the local developmental authority where the new road is being built; a designee from the regional developmental authority in the area where the new road is being built; a designee from the public service commission; a designee from the division of environmental protection; a designee from the county commission where the new road is being built who shall serve as chairperson of the planning team; a citizen of the county where the new road is being built to be chosen by the county commission; and the elected state delegates and senators from the area where the new road is being built. In order to avoid delay of any highway project, immediately upon appointment of a local infrastructure planning team, the director of the division of highways shall submit to the council a time frame within which the planning team must act and within which the planning team must submit any plans, maps, recommendations or reports developed pursuant to this subsection. The local infrastructure planning team shall meet prior to the development and building of a new road. Members of the local infrastructure planning team shall only receive payment for actual expenses incurred. The local infrastructure planning team shall advise the commissioner of the division of highways on the feasibility of an infrastructure plan. The local infrastructure planning team shall meet to develop an infrastructure plan that includes an assessment study of existing water and sewer lines and a feasibility study on future development and laying of water and sewer lines. After these studies are completed, a developmental map shall be drawn of the proposed road route with overlays of the proposed water and sewer lines. These studies and the map shall be presented to the commissioner of the division of highways and shall be used by the commissioner in the planning, developing and building of the road.

(c) The water development authority shall establish a restricted account within the infrastructure fund to be expended for the construction of water and sewage lines as may be recommended by the council in accordance with this article and specifically, in accordance the plan developed under subsection (b) of this section. The reserve account shall be known as the "infrastructure road improvement reserve account". The council and the division of highways may enter into agreements to share the cost of financing projects approved in accordance with this section from moneys available in the infrastructure road reserve account and moneys available from the state road fund. Annually, the council may direct the water development authority to transfer funds from the infrastructure fund in an amount not to exceed one million dollars to the restricted account: Provided, That at no time may the balance of the restricted account exceed one million dollars.

(d) For the purposes of this section the term "new" means a road right-of-way being built for the first time.

(e) After the construction of water and sewer lines adjacent to the new road these new lines shall be turned over to existing utilities by expansion of boundaries of public service districts or shall be main extensions from the municipality. (1994, 1st Ex. Sess., c. 26.)

§ 31-15A-8. Exemption of certain emergency projects from certificate of public convenience and necessity requirements; review of certain emergency projects by public service commission; and exemption for North Fork Hughes River watershed project.

(a) If the council determines a project to be an emergency and the emergency project will be funded solely with grant money for the extension of an existing certificated water facility or wastewater facility, and if the council finds in its recommendation that the construction and acquisition of the emergency project will have no effect on the public utility's customer rates and will have no significant effect on its operational costs as a result of the project cost, then the emergency project is exempt from the requirement to obtain a certificate of public convenience and necessity under section eleven [§ 24-2-11], article two, chapter twenty-four of this code. If the public utility is a public service district, it is exempt from the approval of the public service commission required under section twenty-five [§ 16-13A-25], article thirteen-a, chapter sixteen of this code.

(b) Any public utility, and any other entity that will operate as a public utility, must obtain a certificate of public convenience and necessity pursuant to section eleven [§ 24-2-11], article two, chapter twenty-four of this code for any emergency project that is not exempt under subsection (a) of this section. The public service commission shall render its final decision on any application for a certificate within one hundred twenty days of the filing of the application: Provided, That the thirty-day prefiling requirement is not required. If the project sponsor is a public service district, then the project will be exempted from the approval requirements of section twenty-five [§ 16-13A-25], article thirteen-a, chapter sixteen of this code.

(c) Projects that are not emergency projects are subject to the requirements of section eleven, article two, chapter twenty-four of this code to the extent they would be otherwise.

(d) The North Fork Hughes River watershed project, proposed to enhance economic growth and development through tourism as provided in subsection (l), section two [§ 31-15A-2] of this article and to include a water facility project as defined in subsection (n), section two of this article, is hereby specifically exempted from any requirement imposed by this article, except that the provisions of subsection (a) of this section are specifically made applicable to the project. The project is hereby specifically authorized and the public land corporation shall have and may exercise the power of eminent domain and all authority otherwise prescribed by law to acquire necessary land and rights-of-way, to include approximately four hundred seventy-eight acres, in connection with the project. Funding for the project shall be provided by the federal government from the Appalachian regional commission through the United States soil conservation service. Upon completion of the project, the property acquired shall be transferred to the state park system. The commissioner of the division of tourism and parks or the successor to the commission-

er's powers and duties is directed to expand the boundaries of North Bend state park to include the project area and to operate the expanded park property, including improved recreational facilities, from funds appropriated for that purpose. (1994, 1st Ex. Sess., c. 26; 1998, c. 180.)

Editor's notes. — Concerning the reference in (d) to "a water facility project as defined in subsection (n), section two of this article," the term "water facility" is defined in subsection (x) of that section.

§ 31-15A-9. Infrastructure fund; deposits in fund; disbursements to provide loans, loan guarantees, grants and other assistance; loans, loan guarantees, grants and other assistance shall be subject to assistance agreements.

(a) The water development authority shall create and establish a special revolving fund of moneys made available by appropriation, grant, contribution or loan to be known as the "West Virginia Infrastructure Fund". This fund shall be governed, administered and accounted for by the directors, officers and managerial staff of the water development authority as a special purpose account separate and distinct from any other moneys, funds or funds owned and managed by the water development authority. The infrastructure fund shall consist of sub-accounts, as deemed necessary by the council or the water development authority, for the deposit of: (1) Infrastructure revenues; (2) any appropriations, grants, gifts, contributions, loan proceeds or other revenues received by the infrastructure fund from any source, public or private; (3) amounts received as payments on any loans made by the water development authority to pay for the cost of a project or infrastructure project; (4) insurance proceeds payable to the water development authority or the infrastructure fund in connection with any infrastructure project or project; (5) all income earned on moneys held in the infrastructure fund; (6) all funds deposited in accordance with section four [§ 31-15B-4] of article fifteen-b; and (7) all proceeds derived from the sale of bonds issued pursuant to article fifteen-b [§§ 31-15B-1 et seq.] of this chapter.

Any money collected pursuant to this section shall be paid into the West Virginia infrastructure fund by the state agent or entity charged with the collection of the same, credited to the infrastructure fund, and used only for purposes set forth in this article or article fifteen-b [§§ 31-15B-1 et seq.].

Amounts in the infrastructure fund shall be segregated and administered by the water development authority separate and apart from its other assets and programs. Amounts in the infrastructure fund may not be transferred to any other fund or account or used, other than indirectly, for the purposes of any other program of the water development authority, except that the water development authority may use funds in the infrastructure fund to reimburse itself for any administrative costs incurred by it and approved by the council in connection with any loan, loan guarantee, grant or other funding assistance made by the water development authority pursuant to this article.

(b) Notwithstanding any provision of this code to the contrary, amounts in the infrastructure fund shall be deposited by the water development authority in one or more banking institutions: Provided, That any moneys so deposited shall be deposited in a banking institution located in this state. The banking institution shall be selected by the water development authority by competitive bid. Pending the disbursement of any money from the infrastructure fund as authorized under this section, the water development authority shall invest and reinvest the moneys subject to the limitations set forth in article eighteen [§§ 31-18-1 et seq.], chapter thirty-one of this code.

(c) To further accomplish the purposes and intent of this article and article fifteen-b [§§ 31-15B-1 et seq.] of this chapter, the water development authority may pledge infrastructure revenues and from time to time establish one or more restricted accounts within the infrastructure fund for the purpose of providing funds to guarantee loans for infrastructure projects or projects: Provided, That for any fiscal year the water development authority may not deposit into the restricted accounts more than twenty percent of the aggregate amount of infrastructure revenues deposited into the infrastructure fund during the fiscal year. No loan guarantee shall be made pursuant to this article unless recourse under the loan guarantee is limited solely to amounts in the restricted account or accounts. No person shall have any recourse to any restricted accounts established pursuant to this subsection other than those persons to whom the loan guarantee or guarantees have been made.

(d) Each loan, loan guarantee, grant or other assistance made or provided by the water development authority shall be evidenced by a loan, loan guarantee, grant or assistance agreement between the water development authority and the project sponsor to which the loan, loan guarantee, grant or assistance shall be made or provided, which agreement shall include, without limitation and to the extent applicable, the following provisions:

(1) The estimated cost of the infrastructure project or project, the amount of the loan, loan guarantee or grant or the nature of the assistance, and in the case of a loan or loan guarantee, the terms of repayment and the security therefor, if any;

(2) The specific purposes for which the loan or grant proceeds shall be expended or the benefits to accrue from the loan guarantee or other assistance, and the conditions and procedure for disbursing loan or grant proceeds;

(3) The duties and obligations imposed regarding the acquisition, construction, improvement or operation of the project or infrastructure project; and

(4) The agreement of the governmental agency to comply with all applicable federal and state laws, and all rules and regulations issued or imposed by the water development authority or other state, federal or local bodies regarding the acquisition, construction, improvement or operation of the infrastructure project or project and granting the water development authority the right to appoint a receiver for the project or infrastructure if the project sponsor should default on any terms of the agreement.

(e) Any resolution of the water development authority approving loan, loan guarantee, grant or other assistance shall include a finding and determination that the requirements of this section have been met.

(f) The interest rate on any loan to governmental, quasi-governmental, or not for profit project sponsors for projects made pursuant to this article shall not exceed three percent per annum. Due to the limited availability of funds available for loans for projects, it is the public policy of this state to prioritize funding needs to first meet the needs of governmental, quasi-governmental and not for profit project sponsors and to require that loans made to for-profit entities shall bear interest at the current market rates. Therefore, no loan may be made by the council to a for-profit entity at an interest rate which is less than the current market rate at the time of the loan agreement.

(g) The water development authority shall cause an annual audit to be made by an independent certified public accountant of its books, accounts and records, with respect to the receipts, disbursements, contracts, leases, assignments, loans, grants and all other matters relating to the financial operation of the infrastructure fund, including the operating of any sub-account within the infrastructure fund. The person performing such audit shall furnish copies of the audit report to the commissioner of finance and administration [office abolished], where they shall be placed on file and made available for inspection by the general public. The person performing such audit shall also furnish copies of the audit report to the Legislature's joint committee on government and finance. (1994, 1st Ex. Sess., c. 26; 1995, c. 130.)

Editor's notes. — The office of the commissioner of finance and administration was abolished, and the duties of that office were trans-

ferred to the secretary of administration. See § 5A-1-2.

§ 31-15A-10. Recommendations by council for expenditures of funds by loan, grant or for engineering assistance.

(a) To further accomplish the purpose and intent of this article, the water development authority shall use the moneys in the infrastructure fund created pursuant to section nine [§ 31-15A-9] of this article, upon receipt of one or more recommendations from the council pursuant to section five [§ 31-15A-5] of this article, to make loans, with or without interest, loan guarantees or grants and to provide other assistance, financial, technical or otherwise, to finance all or part of the costs of infrastructure projects or projects to be undertaken by a project sponsor: Provided, That any moneys disbursed from the infrastructure fund in the form of grants shall not exceed twenty percent of the total funds available for the funding of projects. No loan, loan guarantee, grant or other assistance shall be made or provided except upon a determination by the council that the loan, loan guarantee, grant or other assistance and the manner in which it will be provided are necessary or appropriate to accomplish the purposes and intent of this article, based upon an application submitted to the council: Provided, however, That no grant shall be made to a project sponsor that is not a governmental agency or a not for profit corporation under the provisions of section 501(c) [26 USCS § 501(c)] of the Internal Revenue Code of 1986, as amended. Applications for loans, loan guarantees, grants or other assistance may be submitted by a project sponsor for one or

more infrastructure projects on preliminary application forms prepared by the council pursuant to section four [§ 31-15A-4] of this article. Any recommendation of the council approving a loan, loan guarantee, grant or other assistance shall include a finding and determination by the council that the requirements of this section have been met. The council shall base any decisions to loan money for projects to project sponsors pursuant to this article solely on the need of the project sponsors.

(b) The council has the authority in its sole discretion to make grants to project sponsors if it finds that: (1) The level of rates for the users would otherwise be an unreasonable burden given the users' likely ability to pay; or (2) the absence of a sufficient number of users prevents funding of the project except through grants: Provided, That no project sponsor shall receive infrastructure grant money in an amount in excess of fifty percent of the total cost of the project. Therefore, the council may consider the economic or financial conditions of the area to be served. As a condition for receipt of a grant under this subsection, the council may require, in addition to any other conditions, that the applicant pursue other state or federal grant or loan programs. Upon a recommendation by the council, the water development authority shall provide the grant in accordance with the recommendation. The council shall develop criteria to be considered in making grants to project sponsors which shall require consideration of the economic or financial conditions of the area to be served and the availability of other funding sources. The council shall adopt procedural rules regarding the manner in which grants will be awarded in conformity with this section. The procedural rules shall be adopted pursuant to article three [§§ 29A-3-1 et seq.], chapter twenty-nine-a of this code.

(c) Notwithstanding any other provision of this article to the contrary, the council shall apply a mandatory minimum end user utility rate that must be met by the project sponsor before funding assistance may be awarded. The mandatory minimum end utility rate shall be based upon a uniform statewide percentage of the median household income in a particular geographic area and said rate shall not exceed six tenths of one percent: Provided, That funding assistance made from the proceeds of any general obligation bonds and revenue bonds issued after the fifteenth day of March, one thousand nine hundred ninety-eight, after transfer required to make the state match for the water and wastewater revolving loan programs pursuant to article two [§§ 22C-2-1 et seq.], chapter twenty-two-c and article thirteen-c [§§ 16-13C-1 et seq.], chapter sixteen of this code, shall be provided by the council on a pro rata basis divided equally among the congressional districts of this state as delineated in accordance with section three [§ 1-2-3], article two, chapter one of this code: Provided, however, That infrastructure projects as defined in subsection (1), section two [§ 31-15A-2] of this article shall not be subject to pro rata distribution. When determining median household income of a geographic area of the project to be served, the council shall consider any surveys of the income of the households that will be served by the project.

(d) No loan or grant funds may be made available for a project if the project to be funded will provide subsidized services to certain users in the service area of the project.

(e) Notwithstanding any other provision of this article to the contrary, engineering studies and requirements imposed by the council for preliminary applications shall not exceed those engineering studies and requirements which are necessary for the council to determine the economic feasibility of the project. If the council determines that the engineering studies and requirements for the preapplication would impose an undue hardship on any project sponsor, the council may provide funding assistance to project sponsors to defray the expenses of the preapplication process from moneys available in the infrastructure fund for making loans: Provided, That the council may only provide funding assistance in an amount equal to five thousand dollars or fifty percent of the total preapplication cost of the project, whichever amount is greater. If the project is ultimately approved for a loan by the council, the amount of funding assistance provided to the project sponsor for the preapplication process shall be included in the total amount of the loan to be repaid by the project sponsor. If the project is not ultimately approved by the council, then the amount of funding assistance provided to the project sponsor will be considered a grant by the council and the total amount of the assistance shall be forgiven. In no event may the amount of funding assistance provided to all project sponsors exceed, in the aggregate, one hundred thousand dollars annually.

(f) The council shall report to the governor, the speaker of the House of Delegates and the president of the Senate during each regular and interim session of the Legislature, on its activities and decisions relating to distribution or planned distribution of grants and loans under the criteria to be developed pursuant to this article. (1994, 1st Ex. Sess., c. 26; 1995, c. 130; 1998, c. 180.)

Code of State Rules References. — Infrastructure and jobs development council funding rules, 167 CSR1, effective June 6, 1996.

Editor's notes. — Section 501 of the Internal Revenue Code of 1986, referred to in (a), is codified at 26 USCS § 501.

§ 31-15A-11. Reservation of funds for projects and infrastructure projects.

Eighty percent of the funds deposited in the West Virginia infrastructure fund shall be dedicated for the purpose of providing funding for the cost of projects as defined in subsection (n), section two [§ 31-15A-2] of this article. Twenty percent of the funds deposited in the West Virginia infrastructure fund shall be dedicated for the purpose of providing funding for costs of infrastructure projects as defined in subsection (l), section two of this article. Project sponsors of infrastructure projects shall follow the application process as established by this article: Provided, That notwithstanding any provision of this article to the contrary, all applications for any infrastructure project shall be submitted to the council for community and economic development, or its successor, for review, recommendation and approval regarding infrastructure project funding. (1994, 1st Ex. Sess., c. 26; 1998, c. 180.)

Editor's notes. — Concerning the reference to "projects as defined in subsection (n), section two of this article," the term "project" is defined in subsection (o) of that section.

§ 31-15A-12. Additional powers of water development authority.

To accomplish the purpose and intent of this article, the water development authority is hereby empowered, in addition to all other powers granted to it under this code, upon approval of the council, to (1) enter into agreements or other transactions with any federal or state agency in connection with any infrastructure project or project; (2) receive or administer on behalf of any federal or state agency grants, subsidies or other payments to be applied to the costs of any infrastructure project or project financed in whole or in part or otherwise assisted by the water development authority, including, but not limited to, payments to be applied to operating costs and debt service or obligations of any project sponsor; (3) receive and accept aid or contributions from any source of money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions are made; (4) establish and amend the criteria and qualifications for making loans, loan guarantees or grants, or providing any other assistance, for any infrastructure project or project, and the terms of any loans, loan guarantee, grant or assistance agreement for any project; and (5) do all things which are necessary to further the purposes and intent of this article. (1994, 1st Ex. Sess., c. 26.)

§ 31-15A-13. Prohibition on funds inuring to the benefit of or being distributable to water development board; transactions between the water development board and officers having certain interests in such transactions.

No part of the infrastructure fund or the West Virginia infrastructure revenue debt service fund shall inure to the benefit of or be distributable to the water development board directors or officers of the water development authority except that the water development authority is authorized and empowered to pay reasonable compensation, other than to members of the water development board, including the chairman, vice chairman, secretary-treasurer for services rendered and to make loans and exercise its other powers as previously specified in furtherance of its corporate purpose: Provided, That no loans shall be made, and no property shall be purchased or leased from, or sold, leased or otherwise disposed of, to any water development board member or officer of the water development authority. (1994, 1st Ex. Sess., c. 26; 1998, c. 180.)

§ 31-15A-14. Termination or dissolution.

Upon the termination or dissolution of the water development authority, all rights and properties of the water development authority with respect to the

infrastructure fund shall pass to and be vested in the state, subject to the rights of lienholders and other creditors. (1994, 1st Ex. Sess., c. 26.)

§ 31-15A-15. Projects not to be considered public improvements; competitive bid requirements.

(a) No project or infrastructure project acquired, constructed, maintained or financed, in whole or in part, by the water development authority shall be considered to be a "public improvement" within the meaning of the provisions of article five-a [§§ 21-5A-1 et seq.], chapter twenty-one of this code as a result of the financing.

(b) The state and its subdivisions shall, except as provided in subsection (c) of this section, solicit competitive bids and require the payment of prevailing wage rates as provided in article five-a [§§ 21-5A-1 et seq.], chapter twenty-one of this code for every project or infrastructure project funded pursuant to this article exceeding twenty-five thousand dollars in total cost.

Following the solicitation of the bids, the construction contract shall be awarded to the lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond: Provided, That the state and its subdivisions may reject all bids and solicit new bids on the project.

(c) This section does not:

(1) Apply to work performed on construction or repair projects not exceeding a total cost of fifty thousand dollars by regular full-time employees of the state or its subdivisions: Provided, That no more than fifty thousand dollars shall be expended on an individual project in a single location in a twelve-month period;

(2) Prevent students enrolled in vocational educational schools from being used in the construction or repair projects when such use is a part of the students' training program;

(3) Apply to emergency repairs to building components and systems: Provided, That the term "emergency repairs" means repairs that, if not made immediately, will seriously impair the use of the building components and systems or cause danger to those persons using the building components and systems; or

(4) Apply to any situation where the state or a subdivision of the state comes to an agreement with volunteers, or a volunteer group, by which the governmental body will provide construction or repair materials, architectural, engineering, technical or any other professional services and the volunteers will provide the necessary labor without charge to, or liability upon, the governmental body: Provided, That the total cost of the construction or repair projects does not exceed fifty thousand dollars.

(d) The provisions of subsection (b) of this section do not apply to privately owned projects or infrastructure projects constructed on lands not owned by the state or a subdivision of the state. (1994, 1st Ex. Sess., c. 26; 2001, c. 45.)

§ 31-15A-16. Dedication of severance tax proceeds.

(a) There shall be dedicated an annual amount from the collections of the tax collected pursuant to article thirteen-a [§§ 11-13A-1 et seq.], chapter

eleven of this code for the construction, extension, expansion, rehabilitation, repair and improvement of water supply and sewage treatment systems and for the acquisition, preparation, construction and improvement of sites for economic development in this state as provided in this article.

(b) Notwithstanding any other provision of this code to the contrary, beginning on the first day of July, one thousand nine hundred ninety-five, the first sixteen million dollars of the tax collected pursuant to article thirteen-a [§§ 11-13A-1 et seq.], chapter eleven of this code shall be deposited to the credit of the West Virginia infrastructure general obligation debt service fund created pursuant to section three [§ 31-15B-3], article fifteen-b of this chapter: Provided, That beginning on the first day of July, one thousand nine hundred ninety-eight, the first twenty-four million dollars of the tax annually collected pursuant to article thirteen-a of this code shall be deposited to the credit of the West Virginia infrastructure general obligation debt service fund created pursuant to section three, article fifteen-b of this chapter.

(c) Notwithstanding any provision of subsection (b) of this section to the contrary: (1) none of the collections from the tax imposed pursuant to section six [§ 11-13A-6], article thirteen-a, chapter eleven of this code shall be so dedicated or deposited; and (2) the portion of the tax imposed by article thirteen-a [§§ 11-13A-1 et seq.], chapter eleven and dedicated for purposes of medicaid and the division of forestry pursuant to section twenty-a [§ 11-13A-20a] of said article thirteen-a shall remain dedicated for the purposes set forth in said section twenty-a.

(d) On or before the first day of May of each year, commencing the first day of May, one thousand nine hundred ninety-five, the council, by resolution, shall certify to the treasurer and the water development authority the principal and interest coverage ratio and amount for the following fiscal year on any infrastructure general obligation bonds issued pursuant to the provisions of article fifteen-b [§§ 31-15B-1 et seq.] of this chapter. (1994, 1st Ex. Sess., c. 26; 1995, c. 130; 1998, c. 180.)

§ 31-15A-17. Water development authority empowered to issue infrastructure revenue bonds and re-funding bonds; creation of infrastructure revenue debt service fund; funding of infrastructure revenue debt service fund; requirements and manner of such issuance.

(a) To accomplish the purpose and intent of this article, the water development authority is hereby empowered at the written request of the council to issue from time to time infrastructure revenue bonds of the state in such principal amounts as the council deems necessary to make loans and loan guarantees and other forms of financial assistance to project sponsors for one or more projects or infrastructure projects: Provided, That the water development authority may not issue any such bonds, other than refunding bonds, unless the council by resolution determines that the aggregate cost of the

projects or infrastructure projects expected to be constructed during any annual period exceeds (1) the projected annual infrastructure revenues for the same period, and (2) the principal and interest payments not otherwise pledged to the infrastructure revenue debt service fund that are due the water development authority on all outstanding loans previously made by the water development authority pursuant to the provisions of this article.

(b) The proceeds of infrastructure revenue bonds shall be used solely for the purpose of making loans and loan guarantees and other forms of financial assistance to sponsors of one or more projects or infrastructure projects, and shall be deposited in one or more special accounts with the trustee under the trust agreement securing such bonds and disbursed from time to time for projects or infrastructure projects in accordance with this article: Provided, That notwithstanding any provision of this code to the contrary, twenty percent of the funds deposited in the special account shall be dedicated for the purpose of providing funding for costs of infrastructure projects as defined in subsection (l), section two [§ 31-15A-2], of this article.

(c) The water development authority may not authorize the disbursement of any proceeds of infrastructure revenue bonds unless it has received documentation from the council pursuant to the provisions of section ten [§ 31-15A-10] of this article.

(d) There is hereby created in the water development authority a special fund which shall be designated and known as the "West Virginia Infrastructure Revenue Debt Service Fund," into which shall be transferred solely from the loan repayments deposited in the infrastructure fund the amounts certified by the director of the water development authority as necessary to pay the principal, premium, if any, and interest on infrastructure revenue bonds and any reserve requirements, subject to the terms of any agreement with the holders of the infrastructure revenue bonds. All amounts deposited in the West Virginia infrastructure revenue debt service fund shall be pledged to the repayment of the principal, interest and redemption premium, if any, on any infrastructure revenue bonds authorized by this article: Provided, That amounts on deposit in the fund may be used to establish or maintain reserves created for the purposes of securing such infrastructure revenue bonds. The pledge shall be valid and binding from the time the pledge is made, and the West Virginia infrastructure revenue debt service fund so pledged shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the water development authority irrespective of whether the parties have notice thereof.

(e) Except as may otherwise be expressly provided in this article or by resolution of the water development authority, every issue of infrastructure revenue bonds shall be special obligations of the water development authority payable solely from amounts in the West Virginia infrastructure revenue debt service fund, and the reserves created for this purpose by the water development authority, without preference or priority among the bonds regardless of when issued, subject only to any agreements with the holders of any bonds to the contrary. All such bonds are hereby declared to be negotiable instruments.

(f) Infrastructure revenue bonds shall be authorized by resolution of the water development authority. These bonds shall bear such dates and shall mature at such times, in case of any note or renewal thereof not exceeding five years from the date of issue of the original note, and in the case of any bond not exceeding fifty years from the date of issue, as the resolution may provide. Infrastructure revenue bonds shall bear interest at a rate or rates, including variable rates, shall be taxable or tax-exempt, shall be in the denominations, shall be in registered form, shall carry the registration privileges, shall be payable in the medium and place of payment, and shall be subject to the terms of redemption as the water development authority may authorize. Infrastructure revenue bonds may be sold by the water development authority at public or private sale at the price the water development authority determines in consultation with the council. Infrastructure revenue bonds shall be executed by the chairman and the vice chairman of the water development authority, either or both of whom may use a facsimile signature. The official seal of the water development authority or a facsimile thereof shall be affixed thereto or printed thereon and attested by manual or facsimile signature by the secretary-treasurer of the water development authority. If any officer whose signature, or a facsimile of whose signature appears on any infrastructure revenue bond ceases to be such officer before delivery of such bond, such signature or facsimile is nevertheless sufficient for all purposes to the same extent as if he or she had remained in office until such delivery, and if the seal of the water development authority has been changed after a facsimile has been imprinted on such bond, the facsimile will continue to be sufficient for all purposes.

(g) Any resolution authorizing any infrastructure revenue bonds may contain provisions, subject to any agreement with bondholders or noteholders which may then exist, which agreements shall be part of the contract with the holder thereof, with respect to the pledge of or other use and disposition of amounts in the infrastructure revenue debt service fund; the setting aside of reserve funds; the disposition of any assets of the water development authority; limitations on the purpose to which the proceeds of sale of bonds may be applied; the authorization of notes issued in anticipation of the issuance of bonds; an agreement of the water development authority to do all things necessary for the authorization, issuance and sale of such bonds in such amounts as may be necessary for the timely retirement of such notes; limitations on the issuance of additional bonds; the terms upon which additional bonds may be issued and secured; the refunding of outstanding bonds and the renewal of outstanding notes; the procedures, if any, by which the terms of any contract with bondholders or noteholders may be amended or abrogated; the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given; and any other matter which in any way affects the security for or protection of the bonds.

(h) In the event that the sum of all reserves pledged to the payment of the bonds is less than the minimum reserve requirements established in any resolution or resolutions authorizing the issuance of the bonds, the chairman or the director of the water development authority shall certify, on or before the

first day of December of each year, the amount of such deficiency to the governor of the state for inclusion, if the governor shall so elect, of the amount of such deficiency in the budget to be submitted to the next session of the Legislature for appropriation to the water development authority to be pledged for payment of such bonds: Provided, That the Legislature shall not be required to make any appropriations so requested, and the amount of such deficiencies shall not constitute a debt or liability of the state.

(d) Neither the officers or board members of the water development authority, nor any person executing the infrastructure revenue bonds, shall be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof. (1998, c. 180.)

§ 31-15A-17a. Infrastructure revenue bonds payable from A. James Manchin fund.

Notwithstanding any other provision of this code to the contrary, the water development authority may issue, in accordance with the provisions of section seventeen [§ 31-15A-17] of this article, infrastructure revenue bonds payable from the A. James Manchin fund created by section six [§ 17-24-6], article twenty-four, chapter seventeen of this code and such other sources as may be legally pledged for such purposes other than the West Virginia infrastructure revenue debt service fund created by section seventeen of this article. (2003, c. 251.)

Effective dates. — Acts 2003, c. 251, provided that the act take effect June 6, 2003.

§ 31-15A-18. Trustee for holders of infrastructure revenue bonds; contents of trust agreement.

(a) Any infrastructure revenue bonds issued by the water development authority under this article shall be secured by a trust agreement between the water development authority and a corporate trustee, which trustee may be any trust company or banking institution having the powers of a trust company within this state.

(b) Any trust agreement may pledge or assign the infrastructure revenue debt service fund. Any trust agreement or any resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders or noteholders as are reasonable and proper and not in violation of law, including the provisions contained in section seventeen [§ 31-15A-17] of this article, and covenants setting forth the duties of the water development authority in respect to the payment of the principal of and interest, charges and fees on loans made to, or bond purchases from, governmental agencies from the proceeds of the bonds, and the custody, safeguarding and application of all moneys. Any banking institution or trust company incorporated under the laws of this state which may act as depository of the proceeds of bonds or of the infrastructure debt service fund shall furnish such indemnifying bonds or pledge securities as are

required by the water development authority. The trust agreement may set forth the rights and remedies of the bondholders and noteholders and of the trustee and may restrict individual rights of action by bondholders and noteholders as customarily provided in trust agreements or trust indentures securing similar bonds and notes. The trust agreement may contain such other provisions as the water development authority deems reasonable and proper for the security of the bondholders or noteholders. All expenses incurred in carrying out the provisions of any such trust agreement may be treated as part of the cost of the construction, renovation, repair, improvement or acquisition of a project or infrastructure project. (1998, c. 180.)

§ 31-15A-19. Legal remedies of infrastructure revenue bondholders or noteholders and trustees.

Any holder of infrastructure revenue bonds issued pursuant to this article and the trustee under any trust agreement, except to the extent the rights given by this article may be restricted by the applicable resolution or trust agreement, may by civil action, mandamus or other proceedings protect and enforce any rights granted under the laws of this state or granted under this article, by the trust agreement or by the resolution in the issuance of the bonds, and may enforce and compel the performance of all duties required by this article, pursuant to the trust agreement or resolution, to be performed by the water development authority or any officer thereof. (1998, c. 180.)

§ 31-15A-20. Infrastructure revenue bonds lawful investments.

All infrastructure revenue bonds issued pursuant to this article shall be lawful investments for banking institutions, societies for savings, building and loan associations, savings and loan associations, deposit guarantee associations, trust companies, and insurance companies, including domestic for life and domestic not for life insurance companies. (1998, c. 180.)

§ 31-15A-21. Purchase and cancellation of infrastructure revenue bonds.

(a) The water development authority, subject to such agreements with noteholders or bondholders as may then exist, shall have the power, from any funds available therefor, to purchase or redeem infrastructure revenue bonds of the water development authority.

(b) If the infrastructure revenue bonds are then redeemable, the price of the purchase shall not exceed the redemption price then applicable, plus accrued interest to the next interest payment date thereon. If the infrastructure revenue bonds are not then redeemable, the price of the purchase shall not exceed the redemption price applicable on the first date after the purchase upon which the bonds become subject to redemption, plus accrued interest to such date. Upon purchase or redemption, the bonds shall be canceled. (1998, c. 180.)

§ 31-15A-22. Refunding revenue bonds.

Any infrastructure revenue bonds issued pursuant to the provisions of this article and at any time outstanding may at any time and from time to time be refunded by the water development authority by the issuance of its refunding revenue bonds in an amount it deems necessary to refund the principal of the bonds to be refunded, together with any unpaid interest thereon, to provide additional funds for the water development authority to accomplish the purpose of this article, and to pay any premiums and commissions necessary to be paid in connection therewith. Any refunding may be effected whether the infrastructure revenue bonds to be refunded shall have then matured or shall thereafter mature: Provided, That the holders of any infrastructure revenue bonds so to be refunded shall not be compelled without their consent to surrender their infrastructure revenue bonds for payment or exchange prior to the date on which they are payable or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption. Any refunding revenue bonds issued pursuant to this article shall be payable from the West Virginia infrastructure revenue debt service fund, and shall be subject to the provisions contained in section seventeen [§ 31-15A-17] of this article, and shall be secured in accordance with the provisions of sections seventeen and eighteen [§ 31-15A-18] of this article. (1998, c. 180.)

§ 31-15A-23. Infrastructure revenue bonds not debt of state, county, municipality or any political subdivision.

Infrastructure revenue bonds issued pursuant to the provisions of this article shall not constitute a debt or a pledge of the faith and credit or taxing power of this state or of any county, municipality or any other political subdivision of this state. The holders or owners thereof shall have no right to have taxes levied by the Legislature or the taxing authority of any county, municipality or any other political subdivision of this state for the payment of the principal thereof or interest thereon. The bonds shall be payable solely from the revenues and funds pledged for their payment as authorized by this article. All such bonds shall contain on the face thereof a statement to the effect that the bonds, as to both principal and interest, are not debts of the state or any county, municipality or political subdivision thereof, but are payable solely from revenues and funds pledged for their payment. (1998, c. 180.)

§ 31-15A-24. Infrastructure revenue bonds exempt from taxation.

The exercise of the powers granted to the water development authority by this article will be in all respects for the benefit of the people of the state, for the improvement of their health, safety, convenience and welfare and for the enhancement of their residential, agricultural, recreational, economic, commercial and industrial opportunities and is for a public purpose. As the

construction, acquisition, repair or renovation of projects or infrastructure projects will constitute the performance of essential governmental functions, the water development authority shall not be required to pay any taxes or assessments upon any project or upon any property acquired or used by the water development authority or upon the income therefrom. The infrastructure revenue bonds and all interest and income thereon shall be exempt from all taxation by this state, or any county, municipality, political subdivision or agency thereof, except estate taxes. (1998, c. 180.)

ARTICLE 15B.

INFRASTRUCTURE BONDS.

Sec.	Sec.
31-15B-1. Definitions.	
31-15B-2. Infrastructure general obligation bonds; amount; when may issue.	to directors or officers; transactions between the council and West Virginia water development authority and directors or officers having certain interests in such transactions.
31-15B-3. Creation of debt service fund; disbursements to pay debt service on infrastructure general obligation bonds.	31-15B-8. Infrastructure bonds lawful investments.
31-15B-4. Infrastructure general obligation debt service fund; sources used to pay bonds and interest; investment of remainder.	31-15B-9. Refunding bonds.
	31-15B-10. Termination or dissolution.
31-15B-5. Covenants of state.	31-15B-11. Treasurer to determine financial advisor.
31-15B-6. Sale by governor; minimum price.	31-15B-12. Governor to determine bond counsel.
31-15B-7. Prohibition on funds inuring to the benefit of or being distributable	31-15B-13. Approval and payment of all necessary expenses.

§ 31-15B-1. Definitions.

For purposes of this article and article fifteen-a [§§ 31-15A-1 et seq.] of this chapter:

(a) "Council" means the West Virginia infrastructure and jobs development council created in section three [§ 31-15A-3], article fifteen-a of this chapter;

(b) "Infrastructure amendment" means the amendment to the constitution of this state entitled "infrastructure amendment" as approved by referendum in the month of November, one thousand nine hundred ninety-four;

(c) "Infrastructure general obligation bond" means any bond or bonds issued by the state pursuant to section two [§ 31-15B-2] of this article;

(d) "Water development authority" means the West Virginia water development authority established under article one [§§ 22C-1-1 et seq.], chapter twenty-two-c of this code, or any successor to all or any substantial part of its powers and duties. (1995, c. 130.)

§ 31-15B-2. Infrastructure general obligation bonds; amount; when may issue.

Bonds of the state of West Virginia, under authority of the infrastructure improvement amendment of 1994, of the par value not to exceed in the

SB428

FILED

2005 MAY -4 A 9:20

CLERK OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2005

ENROLLED

Committee Substitute for Committee Substitute for
SENATE BILL NO. 428

(By Senators Tomblin, Mr. President, and Sprouse, ~~for~~
By Request of the Executive)

PASSED APRIL 9, 2005

In Effect 90 days from **Passage**

FILED

MAY - 11 A 9 20

WEST VIRGINIA
DEPARTMENT OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 428

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,
BY REQUEST OF THE EXECUTIVE)

[Passed April 9, 2005; in effect ninety days from passage.]

AN ACT to repeal §17-24-1, §17-24-2, §17-24-3, §17-24-4, §17-24-5, §17-24-6, §17-24-7, §17-24-8, §17-24-9 and §17-24-10 of the Code of West Virginia, 1931, as amended; to repeal §20-7-24, §20-7-25, §20-7-26, §20-7-27 and §20-7-29 of said code; to repeal §20-11-1, §20-11-2, §20-11-3, §20-11-4, §20-11-5, §20-11-6, §20-11-7, §20-11-8, §20-11-9, §20-11-10, §20-11-11 and §20-11-12 of said code; to amend and reenact §7-1-3ff of said code; to amend and reenact §17-2A-21 of said code; to amend and reenact §17-23-2 of said code; to amend and reenact §17A-10-16 of said code; to amend and reenact §17C-14-14 of said code; to amend and reenact §22-15-2 and §22-15-21 of said code; to amend said code by adding thereto a new article, designated §22-15A-1, §22-15A-2, §22-15A-3, §22-15A-4, §22-15A-5, §22-15A-6, §22-

15A-7, §22-15A-8, §22-15A-9, §22-15A-10, §22-15A-11, §22-15A-12, §22-15A-13, §22-15A-14, §22-15A-15, §22-15A-16, §22-15A-17, §22-15A-18, §22-15A-19, §22-15A-20, §22-15A-21, §22-15A-22 and §22-15A-23; to amend and reenact §22C-3-7 and §22C-3-24 of said code; to amend and reenact §22C-4-24 and §22C-4-25 of said code; to amend and reenact §31-15A-17a of said code; and to amend and reenact §49-5-13 and §49-5-13b of said code, all relating to the Rehabilitation Environmental Action Plan; consolidating litter control, open dump elimination and reclamation, waste tire clean up and recycling programs; defining certain terms; providing for litter control and recycling programs; providing additional duties of Secretary of the Department of Environmental Protection; transferring assets, contracts and personnel of the Litter Control Program; providing penalties for the unlawful disposal of litter; providing for litter control education; creating the Pollution Prevention and Open Dump Program; providing for assistance to solid waste authorities for litter and solid waste plans; prohibiting waste tires in certain places; providing for penalty for violations thereof; providing that the Department of Environmental Protection is to administer funds for waste tire remediation; authorizing the Secretary of the Department of Environmental Protection to promulgate rules, providing for the disposal of waste tires; providing for the continuation of the A. James Manchin Fund; establishing purposes for expenditure from the A. James Manchin Fund; providing that the Commissioner of the Division of Highways work with the Secretary of the Department of Environmental Protection in certain circumstances; establishing remediation and liability for remediation; clarifying that Commissioner for Bureau for Public Health has the authority to regulate public health matters; establishing recycling goals and plans; establishing county recycling programs for solid waste; providing for a recycling assessment fee; providing for criminal penalties; establishing state recycling program for solid waste; providing for the procurement of recycled products; prohibiting the disposal of certain items; and exempting certain recycling facilities from regulation.

Be it enacted by the Legislature of West Virginia:

That §17-24-1, §17-24-2, §17-24-3, §17-24-4, §17-24-5, §17-24-6, §17-24-7, §17-24-8, §17-24-9 and §17-24-10 of the Code of West Virginia, 1931, as amended, be repealed; that §20-7-24, §20-7-25, §20-7-26, §20-7-27 and §20-7-29 of said code be repealed; that §20-11-1, §20-11-2, §20-11-3, §20-11-4, §20-11-5, §20-11-6, §20-11-7, §20-11-8, §20-11-9, §20-11-10, §20-11-11 and §20-11-12 of said code be repealed; that §7-1-3ff of said code be amended and reenacted; that §17-2A-21 of said code be amended and reenacted; that §17-23-2 of said code be amended and reenacted; that §17A-10-16 of said code be amended and reenacted; that §17C-14-14 of said code be amended and reenacted; that §22-15-2 and §22-15-21 of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §22-15A-1, §22-15A-2, §22-15A-3, §22-15A-4, §22-15A-5, §22-15A-6, §22-15A-7, §22-15A-8, §22-15A-9, §22-15A-10, §22-15A-11, §22-15A-12, §22-15A-13, §22-15A-14, §22-15A-15, §22-15A-16, §22-15A-17, §22-15A-18, §22-15A-19, §22-15A-20, §22-15A-21, §22-15A-22 and §22-15A-23; that §22C-3-7 and §22C-3-24 of said code be amended and reenacted; that §22C-4-24 and §22C-4-25 of said code be amended and reenacted; that §31-15A-17a of said code be amended and reenacted; and that §49-5-13 and §49-5-13b of said code be amended and reenacted, all to read as follows:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3ff. Authority of county commission to enact ordinances regulating the repair, alteration, improvement, vacating, closing, removal or demolition of unsafe or unsanitary structures and the clearance and removal of refuse, debris, overgrown vegetation, toxic spills or toxic seepage on private land; authority to create enforcement agency; procedure for complaints; promulgation of rules governing investigation and hearing of complaints; remedies for failure to comply with commission-ordered repairs

**or alterations; lien and sale of land to recover costs;
entry on land to perform repairs and alterations or
to satisfy lien; receipt of grants and subsidies.**

1 (a) Plenary power and authority are hereby conferred
2 upon every county commission to adopt ordinances
3 regulating the repair, alteration or improvement, or the
4 vacating and closing or removal or demolition, or any
5 combination thereof, of any dwellings or other buildings,
6 except for buildings utilized for farm purposes on land
7 actually being used for farming, unfit for human habita-
8 tion due to dilapidation, defects increasing the hazard of
9 fire, accidents or other calamities, lack of ventilation, light
10 or sanitary facilities or any other conditions prevailing in
11 any dwelling or building, whether used for human habita-
12 tion or not, which would cause the dwellings or other
13 buildings to be unsafe, unsanitary, dangerous or detrimen-
14 tal to the public safety or welfare, whether the result of
15 natural or manmade force or effect.

16 (b) Plenary power and authority are hereby conferred
17 upon every county commission to adopt ordinances
18 regulating the removal and clean up of any accumulation
19 of refuse or debris, overgrown vegetation or toxic spillage
20 or toxic seepage located on private lands which is deter-
21 mined to be unsafe, unsanitary, dangerous or detrimental
22 to the public safety or welfare, whether the result of
23 natural or manmade force or effect.

24 (c) The county commission, in formally adopting ordi-
25 nances, shall designate an enforcement agency which shall
26 consist of the county engineer (or other technically quali-
27 fied county employee or consulting engineer), county
28 health officer or his or her designee, a fire chief from a
29 county fire company, the county litter control officer, if
30 the commission chooses to hire one, and two members at
31 large selected by the county commission to serve two-year
32 terms. The county sheriff shall serve as an ex officio
33 member of the enforcement agency and the county officer

34 charged with enforcing the orders of the county commis-
35 sion under this section.

36 (d) In addition to the powers and duties imposed by this
37 section, county litter control officers shall have authority
38 to issue citations for violations of the provisions of section
39 four, article fifteen-a, chapter twenty-two of this code
40 after completing a training course offered by the West
41 Virginia Department of Environmental Protection.
42 Nothing in this subsection supercedes the authority or
43 duty of other law-enforcement officers to preserve law and
44 order and enforce the litter control program.

45 (e) Any ordinance adopted pursuant to the provisions of
46 this section shall provide fair and equitable rules of
47 procedure and any other standards considered necessary
48 to guide the enforcement agency, or its agents, in the
49 investigation of dwelling or building conditions, accumu-
50 lation of refuse or debris, overgrown vegetation or toxic
51 spillage or toxic seepage and shall provide for fair and
52 equitable rules of procedure for instituting and conducting
53 hearings in the matters before the county commission.
54 Any entrance upon premises for the purpose of making
55 examinations shall be made in a manner as to cause the
56 least possible inconvenience to the persons in possession.

57 (f) Any county commission adopting ordinances autho-
58 rized by this section shall hear and determine complaints
59 of the enforcement agency. Complaints shall be initiated
60 by citation issued by the county litter control officer or
61 petition of the county engineer (or other technically
62 qualified county employee or consulting engineer) on
63 behalf of and at the direction of the enforcement agency,
64 but only after that agency has investigated and determined
65 that any dwelling, building, accumulation of refuse or
66 debris, overgrown vegetation or toxic spillage or toxic
67 seepage is unsafe, unsanitary, dangerous or detrimental to
68 the public safety or welfare and should be repaired,
69 altered, improved, vacated, removed, closed, cleaned or
70 demolished. The county commission shall cause the owner

71 or owners of the private land in question to be served with
72 a copy of the complaint. Service shall be accomplished in
73 the manner provided in Rule 4 of the West Virginia Rules
74 of Civil Procedure. The complaint shall state the findings
75 and recommendations of the enforcement agency and that
76 unless the owner or owners of the property file with the
77 clerk of the county commission a written request for a
78 hearing within ten days of receipt of the complaint, an
79 order will be issued by the county commission implement-
80 ing the recommendations of the enforcement agency. If
81 the owner or owners of the property file a request for a
82 hearing, the county commission shall issue an order setting
83 this matter down for hearing within twenty days. Hear-
84 ings shall be recorded by electronic device or by court
85 reporter. The West Virginia rules of evidence do not apply
86 to the proceedings, but each party has the right to present
87 evidence and examine and cross-examine all witnesses.
88 The enforcement agency has the burden of proving its
89 allegation by a preponderance of the evidence and has the
90 duty to go forward with the evidence. At the conclusion of
91 the hearing the county commission shall make findings of
92 fact, determinations and conclusions of law as to whether
93 the dwelling or building: Is unfit for human habitation due
94 to dilapidation; has defects that increase the hazard of fire,
95 accidents or other calamities, lacks ventilation, light or
96 sanitary facilities; or any other conditions prevailing in the
97 dwelling or building, whether used for human habitation
98 or not and whether the result of natural or manmade force
99 or effect, which would cause such dwelling or other
100 building to be unsafe, unsanitary, dangerous or detrimen-
101 tal to the public safety or welfare; or whether there is an
102 accumulation of refuse or debris, overgrown vegetation,
103 toxic spillage or toxic seepage on private lands which is
104 determined to be unsafe, unsanitary, dangerous or detri-
105 mental to the public safety or welfare, whether the result
106 of natural or manmade force or effect. The county com-
107 mission has authority to order the owner or owners thereof
108 to repair, alter, improve, vacate, remove, close, clean up or

109 demolish the dwelling or building in question or to remove
110 or clean up any accumulation of refuse or debris, over-
111 grown vegetation or toxic spillage or toxic seepage within
112 a reasonable time and to impose daily civil monetary
113 penalties on the owner or owners who fail to obey an
114 order. Appeals from the county commission to the circuit
115 court shall be in accordance with the provisions of article
116 three, chapter fifty-eight of this code.

117 (g) Upon the failure of the owner or owners of the
118 private land to perform the ordered duties and obligations
119 as set forth in the order of the county commission, the
120 county commission may advertise for and seek contractors
121 to make the ordered repairs, alterations or improvements
122 or the ordered demolition, removal or clean up. The
123 county commission may enter into any contract with any
124 contractor to accomplish the ordered repairs, alterations
125 or improvements or the ordered demolition, removal or
126 clean up.

127 (h) A civil proceeding may be brought in circuit court by
128 the county commission against the owner or owners of the
129 private land which is the subject matter of the order of the
130 county commission to subject the private land in question
131 to a lien for the amount of the contractor's costs in making
132 these ordered repairs, alterations or improvements or
133 ordered demolition, removal or clean up, together with any
134 daily civil monetary penalty imposed and reasonable
135 attorney fees and court costs and to order and decree the
136 sale of the private land in question to satisfy the lien and
137 to order and decree that the contractor may enter upon the
138 private land in question at any and all times necessary to
139 make improvements or ordered repairs, alterations or
140 improvements, or ordered demolition, removal or clean up.
141 In addition, the county commission shall have the author-
142 ity to institute a civil action in a court of competent
143 jurisdiction against the landowner or other responsible
144 party for all costs incurred by the county with respect to

145 the property and for reasonable attorney fees and court
146 costs incurred in the prosecution of the action.

147 (i) County commissions have the power and authority to
148 receive and accept grants, subsidies, donations and
149 services in kind consistent with the objectives of this
150 section.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-21. Commissioner authorized to contract for implementation of litter control programs.

1 In addition to all other powers granted and duties
2 imposed upon the Commissioner, he or she shall contract
3 with the Secretary of the Department of Environmental
4 Protection and expend moneys from the highway litter
5 control fund to implement the litter control program and
6 litter control maintenance of the highways pursuant to
7 article fifteen-a, chapter twenty-two of this code.

ARTICLE 23. SALVAGE YARDS.

§17-23-2. Definitions.

1 As used in this article:

2 (a) "Abandoned salvage yard" means any unlicensed
3 salvage yard or any salvage yard that was previously
4 licensed but upon which the license has not been renewed
5 for more than one year.

6 (b) "Commissioner" means the Commissioner of the West
7 Virginia Division of Highways.

8 (c) "Fence" means an enclosure, barrier or screen
9 constructed of materials or consisting of plantings, natural
10 objects or other appropriate means approved by the
11 commissioner and located, placed or maintained so as
12 effectively to screen at all times salvage yards and the

13 salvage therein contained from the view of persons passing
14 upon the public roads of this state.

15 (d) "Occupied private residence" means a private
16 residence which is occupied for at least six months each
17 year.

18 (e) "Owner or operator" includes an individual, firm,
19 partnership, association or corporation or the plural
20 thereof.

21 (f) "Residential community" means an area wherein five
22 or more occupied private residences are located within any
23 one thousand-foot radius.

24 (g) "Salvage" means old or scrap brass, copper, iron,
25 steel, other ferrous or nonferrous materials, batteries or
26 rubber and any junked, dismantled or wrecked machinery,
27 machines or motor vehicles or any parts of any junked,
28 dismantled or wrecked machinery, machines or motor
29 vehicles.

30 (h) "Salvage yard" means any place which is maintained,
31 operated or used for the storing, keeping, buying, selling or
32 processing of salvage, or for the operation and maintenance of a motor vehicle graveyard: *Provided*, That no
33 salvage yard shall accept, store or process more than one
34 hundred waste tires unless it has all permits necessary to
35 operate a monofill, waste tire processing facility or solid
36 waste facility. Any salvage yard which currently has on its
37 premises more than one hundred waste tires not on a
38 vehicle must establish a plan in conjunction with the
39 Department of Environmental Protection for the proper
40 disposal of the waste tires.

42 (i) "Waste tire" means any continuous solid or pneu-
43 matic rubber covering designed to encircle the wheel of a
44 vehicle but which has been discarded, abandoned or is no
45 longer suitable for its original, intended purpose nor
46 suitable for recapping, or other beneficial use, as defined
47 in section two, article fifteen-a, chapter twenty-two of this

48 code, because of wear, damage or defect. A tire is no
49 longer considered to be suitable for its original intended
50 purpose when it fails to meet the minimum requirements
51 to pass a West Virginia motor vehicle safety inspection.
52 Used tires located at a commercial recapping facility or
53 tire dealer for the purpose of being reused or recapped are
54 not waste tires.

55 (j) "Waste tire monofill or monofill" means an approved
56 solid waste facility where waste tires not mixed with any
57 other waste are placed for the purpose of long term storage
58 for eventual retrieval for marketing purposes.

59 (k) "Waste tire processing facility" means a solid waste
60 facility or manufacturer that accepts waste tires generated
61 by sources other than the owner or operator of the facility
62 for processing by such means as cryogenics, pyrolysis,
63 pyroprocessing cutting, splitting, shredding, quartering,
64 grinding or otherwise breaking down waste tires for the
65 purposes of disposal, reuse, recycling or marketing.

**CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION,
REGISTRATION, CERTIFICATE OF TITLE,
AND ANTITHEFT PROVISIONS.**

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-16. Fee for the A. James Manchin Fund.

1 In addition to each fee provided for in this article, an
2 additional five-dollar fee shall be imposed on the issuance
3 of each certificate of title issued pursuant to article three
4 of this chapter. All money collected under this section
5 shall be deposited in the State Treasury and credited to the
6 A. James Manchin Fund to be established within the
7 division of highways for waste tire remediation in accor-
8 dance to the provisions of article fifteen-a, chapter
9 twenty-two of this code. The Commissioner is to work
10 with the Secretary of the Department of Environmental
11 Protection to accomplish the goals of said chapter. The
12 additional fee provided herein shall be imposed for each

11 [Enr. Com. Sub. for Com. Sub. for S. B. No. 428

13 application for certificate and renewal thereof made on or
14 after the first day of July, two thousand: *Provided*, That
15 no further collections or deposits shall be made after the
16 Commissioner certifies to the Governor and the Legisla-
17 ture that the remediation of all waste tire piles that were
18 determined by the Commissioner to exist on the first day
19 of June, two thousand one, has been completed.

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 14. MISCELLANEOUS RULES.

§17C-14-14. Unlawful to litter from motor vehicle; penalty; rule making.

1 (a) It is unlawful for any driver or passenger of a motor
2 vehicle or other conveyance to place, deposit, dump, throw
3 or cause to be placed, deposited, dumped or thrown, any
4 litter from a motor vehicle or other conveyance in or upon
5 any public or private highway, road, street or alley; any
6 private property; any public property; or the waters of the
7 state or within one hundred feet of the waters of this state,
8 except in a proper litter or other solid waste receptacle.

9 (b) For purposes of this section, "litter" means all waste
10 material including, but not limited to, any garbage, refuse,
11 trash, disposable package, container, can, bottle, paper,
12 ashes, cigarette or cigar butt, carcass of any dead animal
13 or any part thereof, or any other offensive or unsightly
14 matter, but not including the wastes of primary processes
15 of mining, logging, sawmilling, farming or manufacturing.

16 (c) In addition to any penalty imposed for littering under
17 the provisions of article fifteen-a, chapter twenty-two of
18 this code, any driver of a motor vehicle or other convey-
19 ance convicted of violating this section shall have three
20 points assessed against his or her driver's license.

21 (d) The Commissioner shall assess points against the
22 driver's license of any driver of a motor vehicle or other

23 conveyance found guilty of violating this section upon
24 receiving notice from a circuit clerk, magistrate court or
25 municipal court of this state of the conviction. Circuit
26 clerks, magistrate courts and municipal courts of this state
27 shall promptly notify the Commissioner of the convictions.

28 (e) When there is more than one occupant in a motor
29 vehicle or other conveyance and it cannot be determined
30 which occupant is responsible for violating this section,
31 the driver shall be presumed to be responsible for the
32 violation.

33 (f) The Commissioner of the Division of Motor Vehicles
34 shall propose or amend legislative rules for promulgation,
35 in accordance with the provisions of article three, chapter
36 twenty-nine-a of this code, to effectuate the purposes of
37 this section.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 15. SOLID WASTE MANAGEMENT ACT.

§22-15-2. Definitions.

1 Unless the context clearly requires a different meaning,
2 as used in this article the terms:

3 (1) "Agronomic rate" means the whole sewage sludge
4 application rate, by dry weight, designed:

5 (A) To provide the amount of nitrogen needed by the
6 food crop, feed crop, fiber crop, cover crop or vegetation
7 on the land; and

8 (B) To minimize the amount of nitrogen in the sewage
9 sludge that passes below the root zone of the crop or
10 vegetation grown on the land to the groundwater.

11 (2) "Applicant" means the person applying for a com-
12 mercial solid waste facility permit or similar renewal
13 permit and any person related to such person by virtue of
14 common ownership, common management or family

15 relationships as the director may specify, including the
16 following: Spouses, parents and children and siblings.

17 (3) "Approved solid waste facility" means a solid waste
18 facility or practice which has a valid permit under this
19 article.

20 (4) "Back hauling" means the practice of using the same
21 container to transport solid waste and to transport any
22 substance or material used as food by humans, animals
23 raised for human consumption or reusable item which may
24 be refilled with any substance or material used as food by
25 humans.

26 (5) "Bulking agent" means any material mixed and
27 composted with sewage sludge.

28 (6) "Class A facility" means a commercial solid waste
29 facility which handles an aggregate of between ten
30 thousand and thirty thousand tons of solid waste per
31 month. Class A facility includes two or more Class B solid
32 waste landfills owned or operated by the same person in
33 the same county, if the aggregate tons of solid waste
34 handled per month by such landfills exceeds nine thousand
35 nine hundred ninety-nine tons of solid waste per month.

36 (7) "Commercial recycler" means any person, corpora-
37 tion or business entity whose operation involves the
38 mechanical separation of materials for the purpose of
39 reselling or recycling at least seventy percent by weight of
40 the materials coming into the commercial recycling
41 facility.

42 (8) "Commercial solid waste facility" means any solid
43 waste facility which accepts solid waste generated by
44 sources other than the owner or operator of the facility
45 and does not include an approved solid waste facility
46 owned and operated by a person for the sole purpose of the
47 disposal, processing or composting of solid wastes created
48 by that person or such person and other persons on a cost-
49 sharing or nonprofit basis and does not include land upon

50 which reused or recycled materials are legitimately
51 applied for structural fill, road base, mine reclamation and
52 similar applications.

53 (9) "Compost" means a humus-like material resulting
54 from aerobic, microbial, thermophilic decomposition of
55 organic materials.

56 (10) "Composting" means the aerobic, microbial,
57 thermophilic decomposition of natural constituents of
58 solid waste to produce a stable, humus-like material.

59 (11) "Commercial composting facility" means any solid
60 waste facility processing solid waste by composting,
61 including sludge composting, organic waste or yard waste
62 composting, but does not include a composting facility
63 owned and operated by a person for the sole purpose of
64 composting waste created by that person or such person
65 and other persons on a cost-sharing or nonprofit basis and
66 shall not include land upon which finished or matured
67 compost is applied for use as a soil amendment or condi-
68 tioner.

69 (12) "Cured compost" or "finished compost" means
70 compost which has a very low microbial or decomposition
71 rate which will not reheat or cause odors when put into
72 storage and that has been put through a separate aerated
73 curing cycle stage of thirty to sixty days after an initial
74 composting cycle or compost which meets all regulatory
75 requirements after the initial composting cycle.

76 (13) "Department" means the Department of Environ-
77 mental Protection.

78 (14) "Energy recovery incinerator" means any solid
79 waste facility at which solid wastes are incinerated with
80 the intention of using the resulting energy for the genera-
81 tion of steam, electricity or any other use not specified
82 herein.

83 (15) "Incineration technologies" means any technology
84 that uses controlled flame combustion to thermally break

85 down solid waste, including refuse-derived fuel, to an ash
86 residue that contains little or no combustible materials,
87 regardless of whether the purpose is processing, disposal,
88 electric or steam generation or any other method by which
89 solid waste is incinerated.

90 (16) "Incinerator" means an enclosed device using
91 controlled flame combustion to thermally break down
92 solid waste, including refuse-derived fuel, to an ash
93 residue that contains little or no combustible materials.

94 (17) "Landfill" means any solid waste facility for the
95 disposal of solid waste on or in the land for the purpose of
96 permanent disposal. Such facility is situated, for purposes
97 of this article, in the county where the majority of the
98 spatial area of such facility is located.

99 (18) "Materials recovery facility" means any solid waste
100 facility at which source-separated materials or materials
101 recovered through a mixed waste processing facility are
102 manually or mechanically shredded or separated for
103 purposes of reuse and recycling, but does not include a
104 composting facility.

105 (19) "Mature compost" means compost which has been
106 produced in an aerobic, microbial, thermophilic manner
107 and does not exhibit phytotoxic effects.

108 (20) "Mixed solid waste" means solid waste from which
109 materials sought to be reused or recycled have not been
110 source-separated from general solid waste.

111 (21) "Mixed waste processing facility" means any solid
112 waste facility at which materials are recovered from mixed
113 solid waste through manual or mechanical means for
114 purposes of reuse, recycling or composting.

115 (22) "Municipal solid waste incineration" means the
116 burning of any solid waste collected by any municipal or
117 residential solid waste disposal company.

118 (23) "Open dump" means any solid waste disposal which
119 does not have a permit under this article, or is in violation
120 of state law, or where solid waste is disposed in a manner
121 that does not protect the environment.

122 (24) "Person" or "persons" means any industrial user,
123 public or private corporation, institution, association, firm
124 or company organized or existing under the laws of this or
125 any other state or country; State of West Virginia; govern-
126 mental agency, including federal facilities; political
127 subdivision; county commission; municipal corporation;
128 industry; sanitary district; public service district; drainage
129 district; soil conservation district; watershed improvement
130 district; partnership; trust; estate; person or individual;
131 group of persons or individuals acting individually or as a
132 group; or any legal entity whatever.

133 (25) "Publicly owned treatment works" means any
134 treatment works owned by the state or any political
135 subdivision thereof, any municipality or any other public
136 entity which processes raw domestic, industrial or municipi-
137 pal sewage by any artificial or natural processes in order
138 to remove or so alter constituents as to render the waste
139 less offensive or dangerous to the public health, comfort or
140 property of any of the inhabitants of this state before the
141 discharge of the plant effluent into any of the waters of
142 this state, and which produces sewage sludge.

143 (26) "Recycling facility" means any solid waste facility
144 for the purpose of recycling at which neither land disposal
145 nor biological, chemical or thermal transformation of solid
146 waste occurs: *Provided*, That mixed waste recovery
147 facilities, sludge processing facilities and composting
148 facilities are not considered recycling facilities nor consid-
149 ered to be reusing or recycling solid waste within the
150 meaning of this article, article fifteen-a of this chapter and
151 article four, chapter twenty-two-c of this code.

152 (27) "Sewage sludge" means solid, semisolid or liquid
153 residue generated during the treatment of domestic sewage

154 in a treatment works. Sewage sludge includes, but is not
155 limited to, domestic septage, scum or solids removed in
156 primary, secondary or advanced wastewater treatment
157 processes and a material derived from sewage sludge.
158 "Sewage sludge" does not include ash generated during
159 the firing of sewage sludge in a sewage sludge incinerator.

160 (28) "Secretary" means the Secretary of the Department
161 of Environmental Protection or such other person to whom
162 the Secretary has delegated authority or duties pursuant
163 to article one of this chapter.

164 (29) "Sewage sludge processing facility" is a solid waste
165 facility that processes sewage sludge for: (A) Land applica-
166 tion; (B) incineration; or (C) disposal at an approved
167 landfill. Such processes include, but are not limited to,
168 composting, lime stabilization, thermophilic, microbial
169 and anaerobic digestion.

170 (30) "Sludge" means any solid, semisolid, residue or
171 precipitate, separated from or created by a municipal,
172 commercial or industrial waste treatment plant, water
173 supply treatment plant or air pollution control facility or
174 any other such waste having similar origin.

175 (31) "Solid waste" means any garbage, paper, litter,
176 refuse, cans, bottles, waste processed for the express
177 purpose of incineration; sludge from a waste treatment
178 plant; water supply treatment plant or air pollution
179 control facility; and other discarded materials, including
180 offensive or unsightly matter, solid, liquid, semisolid or
181 contained liquid or gaseous material resulting from
182 industrial, commercial, mining or community activities
183 but does not include solid or dissolved material in sewage
184 or solid or dissolved materials in irrigation return flows or
185 industrial discharges which are point sources and have
186 permits under article five-a of this chapter, or source,
187 special nuclear or byproduct material as defined by the
188 Atomic Energy Act of 1954, as amended, including any
189 nuclear or byproduct material considered by federal

190 standards to be below regulatory concern, or a hazardous
191 waste either identified or listed under article five-e of this
192 chapter or refuse, slurry, overburden or other wastes or
193 material resulting from coal-fired electric power or steam
194 generation, the exploration, development, production,
195 storage and recovery of coal, oil and gas and other mineral
196 resources placed or disposed of at a facility which is
197 regulated under chapter twenty-two, twenty-two-a or
198 twenty-two-b of this code, so long as placement or dis-
199 posal is in conformance with a permit issued pursuant to
200 such chapters.

201 (32) "Solid waste disposal" means the practice of
202 disposing of solid waste including placing, depositing,
203 dumping or throwing or causing any solid waste to be
204 placed, deposited, dumped or thrown.

205 (33) "Solid waste disposal shed" means the geographical
206 area which the solid waste management board designates
207 and files in the state register pursuant to section eight,
208 article twenty-six, chapter sixteen of this code.

209 (34) "Solid waste facility" means any system, facility,
210 land, contiguous land, improvements on the land, struc-
211 tures or other appurtenances or methods used for process-
212 ing, recycling or disposing of solid waste, including
213 landfills, transfer stations, materials recovery facilities,
214 mixed waste processing facilities, sewage sludge process-
215 ing facilities, commercial composting facilities and other
216 such facilities not herein specified, but not including land
217 upon which sewage sludge is applied in accordance with
218 section twenty of this article. Such facility shall be
219 deemed to be situated, for purposes of this article, in the
220 county where the majority of the spatial area of such
221 facility is located: *Provided*, That a salvage yard, licensed
222 and regulated pursuant to the terms of article twenty-
223 three, chapter seventeen of this code, is not a solid waste
224 facility.

225 (35) "Solid waste facility operator" means any person or
226 persons possessing or exercising operational, managerial
227 or financial control over a commercial solid waste facility,
228 whether or not such person holds a certificate of convenience and necessity or a permit for such facility.
229

230 (36) "Source-separated materials" means materials
231 separated from general solid waste at the point of origin
232 for the purpose of reuse and recycling but does not mean
233 sewage sludge.

§22-15-21. Waste tire management.

1 (a) No person, except those persons who have received
2 and maintained a valid permit or license from the state for
3 the operation of a solid waste facility, waste tire monofill,
4 waste tire processing facility, or other such permitted
5 activities, shall accumulate waste tires without obtaining
6 a license or permit from the Division: *Provided*, That
7 persons who use waste tires for beneficial uses may in the
8 discretion of the Secretary of the Department of Environmental Protection accumulate waste tires without a
9 permit.
10

11 (b) No person shall dispose of waste tires in or upon any
12 public or private land, any site or facility other than a site
13 or facility which holds a valid permit issued by the Department for such disposal or usage.
14

15 (c) No person shall knowingly transport or knowingly
16 allow waste tires under his or her control to be transported
17 to a site or facility that does not have a valid permit or
18 license to accept waste tires.

19 (d) No person shall engage in the open burning of waste
20 tires.

21 (e) Persons who violate this article are subject to all
22 enforcement actions available to the Secretary under the
23 provisions of section fifteen, article fifteen, chapter
24 twenty-two of this code.

25 (f) Except as otherwise provided in subsection (g) of this
26 section, each retailer is required to accept one tire of
27 comparable size for each new tire sold at retail. The
28 retailer may charge a disposal fee to cover the actual costs
29 of lawful waste tire disposal. No retail tire dealer may
30 deliver any waste tire, or part thereof, to a person not
31 authorized by the state of West Virginia to transport or
32 accept waste tires.

33 (g) Any person purchasing a new tire from a retailer
34 must provide a used or waste tire for each tire purchased
35 or sign a waiver, provided to the tire retailer by the
36 Department, acknowledging that he or she is retaining the
37 waste tire and that he or she is legally responsible for
38 proper disposal of each tire retained. These forms are to
39 be kept by the retailer for three years. If the tire purchaser
40 returns to the tire retailer with a signed form given to the
41 purchaser by that retailer, the retailer must accept up to
42 the total number of comparable size tires as previously
43 retained by the purchaser: *Provided*, That persons having
44 winter tires changed or buying new winter tires and
45 keeping usable summer tires for later installation are not
46 required to provide a used or waste tire or sign a waiver.

47 (h) Each tire retailer shall post in a conspicuous place a
48 written notice, provided by the Department, that bears the
49 following statements:

50 (1) "State law requires us to accept your (old) waste tires
51 for recycling or proper disposal if you purchase new tires
52 from us."

53 (2) "State law authorizes us to charge you no more than
54 the actual cost of disposal of your waste tires even if you
55 do not leave your tires with us."

56 (3) "It is a crime to burn, bury, abandon or throw away
57 waste tires without authorization and or permits from the
58 Department of Environmental Protection."

59 This notice must be at least eight and one-half inches
60 wide and eleven inches high.

61 (i) Solid waste facilities shall accept whole waste tires
62 and may charge a reasonable fee for acceptance of waste
63 tires. All waste tires except those disposed of in a landfill
64 shall be excluded from the calculation of monthly tonnage
65 limits and from any solid waste disposal assessment fees
66 imposed by section nineteen, article fifteen-a, chapter
67 twenty-two; section eleven, article fifteen, chapter twenty-
68 two; section four, article sixteen, chapter twenty-two; and
69 section thirty, article four, chapter twenty-two-c of this
70 code.

71 (j) Solid waste facilities shall accept and dispose of
72 whole tires from state authorized tire remediation projects.
73 All waste tires from state authorized tire remediation
74 projects except those disposed of in a landfill shall be
75 excluded from the calculation of monthly tonnage limits
76 and from any solid waste disposal assessment fees imposed
77 by section nineteen, article fifteen-a, chapter twenty-two;
78 section eleven, article fifteen, chapter twenty-two; section
79 four, article sixteen, chapter twenty-two; and section
80 thirty, article four, chapter twenty-two-c of this code. For
81 state-sponsored tire remediation projects, the state may
82 negotiate with the solid waste facility for rates and
83 charges for the disposal of waste tires regardless of the
84 rates and charges established by the Public Service
85 Commission pursuant to article one, chapter twenty-four
86 of this code: *Provided*, That the disposal of whole tires in
87 a solid waste facility is allowed only when the Department
88 of Environmental Protection has determined there is no
89 other reasonable alternative available.

90 (k) The Department shall propose for legislative promul-
91 gation emergency and legislative rules to effectuate the
92 purposes of this section.

**ARTICLE 15A. THE A. JAMES MANCHIN REHABILITATION ENVIRON-
MENTAL ACTION PLAN.**

§22-15A-1. Legislative findings and purpose.

1 (a) The Legislature finds that litter is a public nuisance
2 and distracts from the beauty of the state and its natural
3 resources. It is therefore necessary to establish and
4 implement a litter control program to coordinate public
5 and private litter control efforts; to establish penalties for
6 littering; to provide for litter pickup programs; to create
7 education programs; and to provide assistance to local
8 solid waste authority litter control efforts.

9 (b) The Legislature further finds that the improper
10 management of commercial and residential solid waste
11 and the unlawful disposal of such waste creates open
12 dumps that adversely impacts the state's natural resources,
13 public water supplies and the public health, safety and
14 welfare of the citizens of the state. It is therefore neces-
15 sary to establish a program to promote pollution preven-
16 tion and to eliminate and remediate open dumps.

17 (c) The Legislature further finds that waste tire piles are
18 a direct product of state citizens use and enjoyment of
19 state roads and highways and proper waste tire disposal is
20 a necessary component of maintenance of the transporta-
21 tion system. The accumulation of waste tires has also
22 become a significant environmental and public health
23 hazard to the state and the location and number of waste
24 tires are directly related to the efficiency of travel, by
25 citizens, visitors and of commerce, along public highways
26 in West Virginia. In particular, the Legislature recognizes
27 that waste tires are widespread in location and in number
28 throughout the state; waste tires physically touch and
29 concern public highways, including, but not limited to,
30 state roads, county roads, park roads, secondary routes
31 and orphan roads, all of which interferes with the effi-
32 ciency of public highways; and further that the existence
33 of waste tires along and near public highways is sometimes
34 accompanied by other hazards and, in turn, adversely
35 impacts the proper maintenance and efficiency of public
36 highways for citizens.

37 (d) The Legislature also recognizes and declares that
38 waste tires are a public nuisance and hazard; that waste
39 tires serve as harborage and breeding places for rodents,
40 mosquitoes, fleas, ticks and other insects and pests injuri-
41 ous to the public health, safety and general welfare; that
42 waste tires collected in large piles pose an excessive risk to
43 public health, safety and welfare from disease or fire; that
44 the environmental, economic and societal damage result-
45 ing from fires in waste tire piles can be avoided by remov-
46 ing the piles; and that tire pile fires cause extensive
47 pollution of the air and surface and groundwater for miles
48 downwind and downstream from the fire.

49 (e) Therefore, in view of the findings relating to waste
50 tires, the Legislature declares it to be the public policy of
51 the State of West Virginia to eliminate the present danger
52 resulting from discarded or abandoned waste tires and to
53 eliminate the visual pollution resulting from waste tire
54 piles and that in order to provide for the public health,
55 safety and welfare, quality of life and to reverse the
56 adverse impacts to the proper maintenance and efficiency
57 of public highways, it is necessary to enact legislation to
58 those ends by providing expeditious means and methods
59 for effecting the disposal of waste tires.

60 (f) The Legislature finds that many citizens desire a
61 recycling program in order to conserve limited natural
62 resources, reduce litter, recycle valuable materials, extend
63 the useful life of solid waste landfills, reduce the need for
64 new landfills, and create markets for recyclable materials.
65 It is therefore necessary to establish goals for recycling
66 solid waste; to require certain municipalities to implement
67 recycling programs; to authorize counties to adopt com-
68 prehensive recycling programs; to encourage source
69 separation of solid waste; to increase the purchase of
70 recycled products by the various agencies and instrumen-
71 talities of government; and to educate the public concern-
72 ing the benefits of recycling.

73 (g) The Legislature finds that the effectiveness of litter
74 control, open dump, tire clean up programs and recycling
75 programs have been made less efficient by fragmented
76 implementation of the various programs by different
77 agencies. It is therefore necessary to coordinate all such
78 programs under one program managed by the Department
79 to ensure that all current and future litter, open dump,
80 waste tire and recycling issues are managed and addressed
81 efficiently and effectively.

82 (h) This article implements the A. James Manchin
83 Rehabilitation Environmental Action Plan, a coordinated
84 effort to address litter, waste, open dump, tire clean up
85 and recycling programs.

§22-15A-2. Definitions.

1 Unless the context clearly indicates a different meaning
2 or defined elsewhere in this chapter, as used in this article:

3 (1) "Beneficial use" means the use or reuse of whole
4 waste tires or tire derived material which are reused in
5 constructing retaining walls, rebuilding highway shoulders
6 and subbase, building highway crash attenuation barriers,
7 feed hopper or watering troughs for livestock, other
8 agricultural uses approved by the Department of Environ-
9 mental Protection, playground equipment, boat or truck
10 dock construction, house or building construction, go-cart,
11 motorbike or race track barriers, or similar types of
12 beneficial applications: *Provided*, That waste tires may
13 not be reused as fencing, as erosion control structures,
14 along stream banks or river banks or reused in any manner
15 where human health or the environment, as determined by
16 the Secretary of the Department of Environmental Protec-
17 tion, is put at risk.

18 (2) "Collected for commercial purposes" means taking
19 solid waste for disposal from any person for remuneration
20 regardless of whether or not the person taking the solid
21 waste is a common carrier by motor vehicle governed by
22 article two, chapter twenty-four-a of this code.

23 (3) "Court" means any circuit, magistrate or municipal
24 court.

25 (4) "Department" means the Department of Environ-
26 mental Protection.

27 (5) "Litter" means all waste material including, but not
28 limited to, any garbage, refuse, trash, disposable package,
29 container, can, bottle, paper, ashes, cigarette or cigar butt,
30 carcass of any dead animal or any part thereof, or any
31 other offensive or unsightly matter, but not including the
32 wastes of primary processes of mining, logging,
33 sawmilling, farming or manufacturing.

34 (6) "Litter receptacle" means those containers suitable
35 for the depositing of litter at each respective public area
36 designated by the Secretary's rules promulgated pursuant
37 to subsection (e), section three of this article.

38 (7) "Person" means a natural person, corporation, firm,
39 partnership, association or society, and the plural as well
40 as the singular.

41 (8) "Public area" means an area outside of a municipal-
42 ity, including public road and highway rights-of-way,
43 parks and recreation areas owned or controlled by this
44 state or any county of this state, or an area held open for
45 unrestricted access by the general public.

46 (9) "Remediate or Remediation" means to remove all
47 litter, solid waste, and tires located above grade at a site:
48 *Provided*, That remediation does not include clean up of
49 hazardous waste.

50 (10) "Secretary" means the Secretary of the Department
51 of Environmental Protection.

52 (11) "Waste tire" means any continuous solid or pneu-
53 matic rubber covering designed to encircle the wheel of a
54 vehicle but which has been discarded, abandoned or is no
55 longer suitable for its original, intended purpose nor
56 suitable for recapping, or other beneficial use because of

57 wear, damage or defect. A tire is no longer considered to
58 be suitable for its original intended purpose when it fails
59 to meet the minimum requirements to pass a West Virginia
60 motor vehicle safety inspection. Used tires located at a
61 commercial recapping facility or tire dealer for the
62 purpose of being reused or recapped are not waste tires.

63 (12) "Waste tire monofill or monofill" means an ap-
64 proved solid waste facility where no solid waste except
65 waste tires are placed for the purpose of long term storage
66 for eventual retrieval for marketing purposes.

67 (13) "Waste tire processing facility" means a solid waste
68 facility or manufacturer that accepts waste tires generated
69 by sources other than the owner or operator of the facility
70 for processing by such means as cryogenics, pyrolysis,
71 pyroprossing cutting, splitting, shredding, quartering,
72 grinding or otherwise breaking down waste tires for the
73 purposes of disposal, reuse, recycling and/or marketing.

74 (14) "Waters of the state" means generally, without
75 limitation, natural or artificial lakes, rivers, streams,
76 creeks, branches, brooks, ponds, impounding reservoirs,
77 springs, wells, watercourses and wetlands.

**§22-15A-3. West Virginia litter control and recycling programs;
transfer of programs and employees; additional
duties of Secretary; grants to counties and mu-
nicipalities; and rules relating thereto.**

1 (a) On and after the first day of July, two thousand five,
2 the litter control and recycling programs heretofore
3 operated and managed by the Division of Natural Re-
4 sources shall transfer to the Department of Environmental
5 Protection.

6 With the transfer of the West Virginia Litter Control and
7 Recycling Programs from the jurisdiction of the Division
8 of Natural Resources to the jurisdiction of the Department
9 of Environmental Protection, all records, assets and
10 contracts, along with rights and obligations thereunder,

11 obtained or signed on behalf of the Litter Control and
12 Recycling Programs are hereby transferred and assigned
13 to the Department of Environmental Protection.

14 (b) The Commissioner of the Division of Natural Re-
15 sources and the Secretary of the Department of Environ-
16 mental Protection shall determine which employees of the
17 Division of Natural Resources will be transferred to the
18 Department of Environmental Protection. All employees
19 including administrators of the litter control and recycling
20 programs are subject to being transferred to the Depart-
21 ment of Environmental Protection. Employees in the
22 classified service who have gained permanent status as of
23 the effective date of this article, enacted during the two
24 thousand five regular session of the Legislature, will not
25 be subject to further qualifying examination in their
26 respective classifications by reason of the transfer required
27 by the provisions of this section. Nothing contained in this
28 section may be construed to either abridge the rights of
29 employees within the classified service of the state to the
30 procedures and protections set forth in article six, chapter
31 twenty-nine of this code or to preclude the reclassification
32 or reallocation of positions in accordance with procedures
33 set forth in said article. The Division of Personnel shall
34 work with the Commission and Secretary to efficiently
35 transfer employees from the Division of Natural Resources
36 to the Department of Environmental Protection.

37 (c) In addition to all other powers, duties and responsi-
38 bilities granted and assigned to the Secretary of the
39 Department of Environmental Protection in this chapter
40 and elsewhere by law, the Secretary, in the administration
41 of the West Virginia Litter Control Program created by
42 this section, shall:

43 (1) Coordinate all industry and business organizations
44 seeking to aid in the litter control and recycling effort;

45 (2) Cooperate with all local governments to accomplish
46 coordination of local litter control and recycling efforts;

47 (3) Encourage, organize, coordinate and increase public
48 awareness of and participation in all voluntary litter
49 control and recycling campaigns, including citizen litter
50 watch programs, seeking to focus the attention of the
51 public on the litter control and recycling programs of the
52 state and local governments and of private recycling
53 centers;

54 (4) Recommend to local governing bodies that they adopt
55 ordinances similar to the provisions of section four of this
56 article;

57 (5) Investigate the methods and success of techniques of
58 litter control, removal and disposal utilized in other states,
59 and develop, encourage, organize and coordinate local
60 litter control programs funded by grants awarded pursu-
61 ant to subsection (d) of this section utilizing such success-
62 ful techniques;

63 (6) Investigate the availability of, and apply for, funds
64 available from any and all private or public sources to be
65 used in the litter control program created by this section;

66 (7) Attract to the state persons or industries that pur-
67 chase, process or use recyclable materials; and

68 (8) Contract for the development, production and
69 broadcast of radio and television messages promoting the
70 West Virginia Litter Control Program. The messages
71 should increase public awareness of and promote citizen
72 responsibility toward the reduction of litter.

73 (d) All authority to promulgate rules pursuant to article
74 three, chapter twenty-nine-a of this code establishing
75 criteria for awarding direct or matching grants for the
76 study of available research and development in the fields
77 of litter control, removal and disposal, methods for the
78 implementation of such research and development, and the
79 development of public educational programs concerning
80 litter control is hereby transferred from the Division of
81 Natural Resources to the Secretary of the Department of

82 Environmental Protection as of the effective date of
83 enactment of this section and article during the two
84 thousand five session of the Legislature: *Provided*, That
85 any rule promulgated by the Division of Natural Resources
86 relating to such grants shall remain in force and effect as
87 though promulgated by the Department of Environmental
88 Protection until the Secretary amends the rules in accor-
89 dance with the provisions of article three, chapter twenty-
90 nine-a of this code.

91 (e) All authority to promulgate rules pursuant to article
92 three, chapter twenty-nine-a of this code designating
93 public areas where litter receptacles shall be placed and
94 the minimum number of litter receptacles in accordance
95 with subsection (g), section four of this article is hereby
96 transferred from the Division of Natural Resources to the
97 Secretary of the Department of Environmental Protection
98 as of the effective date of enactment of this section and
99 article during the two thousand five session of the Legisla-
100 ture. Any rule promulgated by the Division of Natural
101 Resources relating to littering receptacles shall remain in
102 effect as if promulgated by the Secretary until amended by
103 the Secretary.

104 (f) Commencing on the first day of July, two thousand
105 five, the Secretary shall expend annually at least fifty
106 percent of the moneys credited to the Litter Control Fund
107 in the previous fiscal year for matching grants to counties
108 and municipalities for the initiation and administration of
109 litter control programs. The Secretary shall promulgate
110 rules pursuant to article three, chapter twenty-nine-a of
111 this code establishing criteria for the awarding of match-
112 ing grants.

113 (g) The Secretary of the Department of Environmental
114 Protection in cooperation with the Commissioner of
115 Highways, the Department of Commerce, the West Vir-
116 ginia State Police, the United States Forestry Service and
117 other local, state and federal law-enforcement agencies
118 shall be responsible for the administration and enforce-

119 ment of all laws and rules relating to the maintenance of
120 cleanliness and improvement of appearances on and along
121 highways, roads, streets, alleys and any other private or
122 public areas of the state. These other agencies shall make
123 recommendations to the Secretary, from time to time,
124 concerning means and methods of accomplishing litter
125 control consistent with the provisions of this chapter.
126 Such cooperation shall include, but not be limited to,
127 contracts with the Commissioner of Highways to operate
128 a litter control program.

129 (h) All other state agencies and local governments shall
130 cooperate with the Secretary in effecting the purposes of
131 the litter control program.

**§22-15A-4. Unlawful disposal of litter; civil and criminal pen-
alty; litter control fund; evidence; notice viola-
tions; litter receptacle placement; penalty; duty
to enforce violations.**

1 (a) (1) No person shall place, deposit, dump, throw or
2 cause to be placed, deposited, dumped or thrown any litter
3 as defined in section two of this article, in or upon any
4 public or private highway, road, street or alley; any private
5 property; any public property; or the waters of the state or
6 within one hundred feet of the waters of this state, except
7 in a proper litter or other solid waste receptacle.

8 (2) It is unlawful for any person to place, deposit, dump,
9 throw or cause to be placed, deposited, dumped or thrown
10 any litter from a motor vehicle or other conveyance or to
11 perform any act which constitutes a violation of the motor
12 vehicle laws contained in section fourteen, article fourteen,
13 chapter seventeen-c of this code.

14 (3) If any litter is placed, deposited, dumped, discharged,
15 thrown or caused to be placed, deposited, dumped or
16 thrown from a motor vehicle, boat, airplane or other
17 conveyance, it is prima facie evidence that the owner or
18 the operator of the motor vehicle, boat, airplane or other

19 conveyance intended to violate the provisions of this
20 section.

21 (4) Any person who violates the provisions of this section
22 by placing, depositing, dumping or throwing or causing to
23 be placed, deposited, dumped or thrown any litter, not
24 collected for commercial purposes, in an amount not
25 exceeding one hundred pounds in weight or twenty-seven
26 cubic feet in size, is guilty of a misdemeanor. Upon
27 conviction, he or she is subject to a fine of not less than
28 fifty dollars nor more than one thousand dollars, or in the
29 discretion of the court, sentenced to perform community
30 service by cleaning up litter from any public highway,
31 road, street, alley or any other public park or public
32 property, or waters of the state, as designated by the court,
33 for not less than eight nor more than sixteen hours, or
34 both.

35 (5) Any person who violates the provisions of this section
36 by placing, depositing, dumping or throwing or causing to
37 be placed, deposited, dumped or thrown any litter, not
38 collected for commercial purposes, in an amount greater
39 than one hundred pounds in weight or twenty-seven cubic
40 feet in size, but less than five hundred pounds in weight or
41 two hundred sixteen cubic feet in size is guilty of a misde-
42 meanor. Upon conviction he or she is subject to a fine of
43 not less than five hundred dollars nor more than two
44 thousand dollars, or in the discretion of the court, may be
45 sentenced to perform community service by cleaning up
46 litter from any public highway, road, street, alley or any
47 other public park or public property, or waters of the
48 state, as designated by the court, for not less than sixteen
49 nor more than thirty-two hours, or both.

50 (6) Any person who violates the provisions of this section
51 by placing, depositing, dumping or throwing or causing to
52 be placed, deposited, dumped or thrown any litter in an
53 amount greater than five hundred pounds in weight or two
54 hundred sixteen cubic feet in size or any amount which
55 had been collected for commercial purposes is guilty of a

56 misdemeanor. Upon conviction, the person is subject to a
57 fine not less than twenty-five hundred dollars or not more
58 than twenty-five thousand dollars, or confinement in a
59 county or regional jail for not more than one year or both.
60 In addition, the violator may be guilty of creating or
61 contributing to an open dump as defined in section two,
62 article fifteen, chapter twenty-two of this code and subject
63 to the enforcement provisions of section fifteen of said
64 article.

65 (7) Any person convicted of a second or subsequent
66 violation of this section is subject to double the authorized
67 range of fines and community service for the subsection
68 violated.

69 (8) The sentence of litter clean up shall be verified by
70 environmental inspectors from the Department of Envi-
71 ronmental Protection. Any defendant receiving the
72 sentence of litter clean up shall provide, within a time to
73 be set by the court, written acknowledgment from an
74 environmental inspector that the sentence has been
75 completed and the litter has been disposed of lawfully.

76 (9) Any person who has been found by the court to have
77 willfully failed to comply with the terms of a litter clean
78 up sentence imposed by the court pursuant to this section
79 is subject to, at the discretion of the court, double the
80 amount of the original fines and community service
81 penalties originally ordered by the court.

82 (10) All law-enforcement agencies, officers and environ-
83 mental inspectors shall enforce compliance with this
84 section within the limits of each agency's statutory
85 authority.

86 (11) No portion of this section restricts an owner, renter
87 or lessee in the lawful use of his or her own private
88 property or rented or leased property or to prohibit the
89 disposal of any industrial and other wastes into waters of
90 this state in a manner consistent with the provisions of

91 article eleven, chapter twenty-two of this code. But if any
92 owner, renter or lessee, private or otherwise, knowingly
93 permits any such materials or substances to be placed,
94 deposited, dumped or thrown in such location that high
95 water or normal drainage conditions will cause any such
96 materials or substances to wash into any waters of the
97 state, it is prima facie evidence that the owner, renter or
98 lessee intended to violate the provisions of this section:
99 *Provided*, That if a landowner, renter or lessee, private or
100 otherwise, reports any placing, depositing, dumping or
101 throwing of these substances or materials upon his or her
102 property to the prosecuting attorney, county commission,
103 the Division of Natural Resources or the Department of
104 Environmental Protection, the landowner, renter or lessee
105 will be presumed to not have knowingly permitted the
106 placing, depositing, dumping or throwing of the materials
107 or substances.

108 (b) Any indication of ownership found in litter shall be
109 prima facie evidence that the person identified violated the
110 provisions of this section: *Provided*, That no inference
111 may be drawn solely from the presence of any logo,
112 trademark, trade name or other similar mass reproduced
113 things of identifying character appearing on the found
114 litter.

115 (c) Every person who is convicted of or pleads guilty to
116 disposing of litter in violation of subsection (a) of this
117 section shall pay a civil penalty in the sum of not less than
118 one hundred dollars nor more than one thousand dollars as
119 costs for clean up, investigation and prosecution of the
120 case, in addition to any other court costs that the court is
121 otherwise required by law to impose upon a convicted
122 person.

123 The clerk of the circuit court, magistrate court or
124 municipal court in which these additional costs are
125 imposed shall, on or before the last day of each month,
126 transmit fifty percent of a civil penalty received pursuant
127 to this section to the State Treasurer for deposit in the

128 State Treasury to the credit of a special revenue fund to be
129 known as the Litter Control Fund which is hereby contin-
130 ued and transferred to the Department of Environmental
131 Protection. Expenditures for purposes set forth in this
132 section are not authorized from collections but are to be
133 made only in accordance with appropriation and in
134 accordance with the provisions of article three, chapter
135 twelve of this code and upon fulfillment of the provisions
136 set forth in article two, chapter five-a of this code.
137 Amounts collected which are found from time to time to
138 exceed the funds needed for the purposes set forth in this
139 article may be transferred to other accounts or funds and
140 designated for other purposes by appropriation of the
141 Legislature.

142 (d) The remaining fifty percent of each civil penalty
143 collected pursuant to this section shall be transmitted to
144 the county or regional solid waste authority in the county
145 where the litter violation occurred. Moneys shall be
146 expended by the county or regional solid waste authority
147 for the purpose of litter prevention, clean up and enforce-
148 ment. The county commission shall cooperate with the
149 county or regional solid waste authority serving the
150 respective county to develop a coordinated litter control
151 program pursuant to section eight, article four, chapter
152 twenty-two-c of this code.

153 (e) The Commissioner of the Division of Motor Vehicles,
154 upon registering a motor vehicle or issuing an operator's
155 or chauffeur's license, shall issue to the owner or licensee,
156 as the case may be, a summary of this section and section
157 fourteen, article fourteen, chapter seventeen-c of the code.

158 (f) The Commissioner of the Division of Highways shall
159 cause appropriate signs to be placed at the state boundary
160 on each primary and secondary road, and at other loca-
161 tions throughout the state, informing those entering the
162 state of the maximum penalty provided for disposing of
163 litter in violation of subsection (a) of this section.

164 (g) Any state agency or political subdivision that owns,
 165 operates or otherwise controls any public area as may be
 166 designated by the Secretary by rule promulgated pursuant
 167 to subdivision (8), subsection (a), section three of this
 168 article shall procure and place litter receptacles at its own
 169 expense upon its premises and shall remove and dispose of
 170 litter collected in the litter receptacles. After receiving
 171 two written warnings from any law-enforcement officer or
 172 officers to comply with this subsection or the rules of the
 173 Secretary, any state agency or political subdivision that
 174 fails to place and maintain the litter receptacles upon its
 175 premises in violation of this subsection or the rules of the
 176 Secretary shall be fined fifteen dollars per day of the
 177 violation.

**§22-15A-5. Litter pickup and removal; education; government
 recycling responsibilities; monitoring and evaluation;
 study commission; repeal; report to Legisla-
 ture.**

1 (a) *Litter pickup and removal.* -

2 (1) Each county commission and the Regional Jail
 3 Authority may establish a jail or prison inmate program
 4 including a regular litter pickup work regimen under
 5 proper supervision pursuant to section four, article fifteen,
 6 chapter seventeen of this code. Funding for these pro-
 7 grams shall be from the Litter Control Fund. Funding
 8 requirements may include salaries for additional personnel
 9 needed for the program. The program may include the
 10 cooperative help of the Division of Highways or any other
 11 voluntary state, local, private, civic or public agency for
 12 personnel, equipment or materials in establishing a county
 13 or regionwide, continual program of inmate litter pickup.
 14 Upon final approval of the projected cost of the program
 15 for a given fiscal year, the Secretary shall disburse the
 16 approved amount to the county or Regional Jail Authority.
 17 The funds will be used by the Authority to reimburse the
 18 county commission or Regional Jail Authority for its
 19 expenses related to the program and to pay other costs

20 related to the use of inmates for litter pickup. Nothing
21 contained herein shall preclude a county or counties from
22 expending whatever additional funds its commission or
23 commissions may deem appropriate from any other
24 revenue source in furtherance of said program.

25 (2) All persons involved with litter pickup may separate
26 identifiable recyclable materials from other litter col-
27 lected. The funds resulting from the sale of those recycla-
28 ble materials shall be returned to the Litter Control Fund.

29 (3) The county or regional solid waste authority may also
30 contract with local governments, civic organizations or
31 chief correctional officers in any county to implement
32 litter pickup and removal pursuant to this act when the
33 state offender work force is not available. In such cases,
34 the contract provisions shall require that identifiable
35 recyclable materials shall be separated from other litter
36 collected, with resulting funds returned to the Litter
37 Control Fund. Priority shall be given to those contracts
38 that maximize the use of community service hours by
39 inmates and youth employment programs.

40 (b) *Education.* -

41 (1) The Department of Education in cooperation with the
42 Department of Environmental Protection shall distribute
43 educational materials to the schools based on the goals of
44 litter clean up and proper solid waste disposal, the ratio-
45 nale for the goals and how primary and secondary school
46 students can contribute to the achievement of the goals.
47 The Department of Education shall further incorporate
48 this information into the curriculum of the public school
49 system as appropriate.

50 (2) The Division of Highways and local governments
51 shall conduct public awareness programs to notify the
52 public of the provisions of this law and how they can
53 participate, to inform them as to the rationale behind the
54 provisions of this law, to advise them of other avenues for

55 achievement of the noted goals and to encourage their
56 participation.

57 (3) The Department of Environmental Protection and the
58 Solid Waste Management Board shall provide technical
59 assistance to local governments in the implementation of
60 this law.

61 (c) *Government recycling responsibilities.* -

62 (1) All state agencies and regional planning councils may
63 establish and implement aluminum container, glass and
64 paper recycling programs at their public facilities. To the
65 extent practicable, programs for other metals, plastics,
66 rubber and other recyclable materials may be established
67 and implemented. The moneys collected from the sale of
68 such materials shall be deposited and accounted for in the
69 Litter Control Fund pursuant to the authority of section
70 four of this article.

71 (2) To further promote recycling and reduction of the
72 waste stream, county and municipal governments shall
73 consider the establishment of recycling programs as
74 provided in this section in the operation of their facilities
75 and shall evaluate the cost-effectiveness of:

76 (A) Procedures that separate identifiable recyclable
77 materials from solid waste collected; and

78 (B) Programs that provide for:

79 (i) The establishment of a collection place for recyclables
80 at all landfills and other interim solid waste collection
81 sites and arrangements for the material collected to be
82 recycled;

83 (ii) Public notification of such places and encouragement
84 to participate;

85 (iii) The use of rate differentials at landfills to facilitate
86 public participation in on-site recycling programs.

87 (d) Each affected agency and local government shall
88 monitor and evaluate the programs implemented pursuant
89 to this law.

90 (e) The Secretary shall submit a report to the Speaker of
91 the House and the President of the Senate not later than
92 the first day of March, two thousand six, and every five
93 years thereafter regarding the effectiveness of the pro-
94 grams authorized by this law.

§22-15A-6. Assistance to solid waste authorities.

1 The Secretary may expend funds from the Litter Control
2 Fund established pursuant to section four of this article to
3 assist county and regional solid waste authorities in the
4 formulation of their comprehensive litter and solid waste
5 control plans pursuant to section eight, article four,
6 chapter twenty-two-c of this code and in the construction
7 and maintenance of approved commercial solid waste
8 facilities authorities which would in the opinion of the
9 Secretary be unable to construct or maintain an approved
10 commercial solid waste facility without grant funds.

§22-15A-7. Pollution prevention and open dumps.

1 (a) The Secretary shall establish the Pollution Prevention
2 and Open Dump (PPOD) Program to encourage the proper
3 disposal of commercial and residential solid waste and to
4 undertake all reclamation, clean up and remedial actions
5 necessary to minimize or mitigate damage to the environ-
6 ment, natural resources, public water supplies, water
7 resources and the public health, safety and welfare which
8 may result from open dumps or solid waste not disposed of
9 in a proper or lawful manner. The program shall seek to
10 eliminate open dumps, which often include waste tires and
11 to recycle as many items as possible from these reclama-
12 tion efforts. This program shall be funded through the
13 Solid Waste Reclamation and Environmental Response
14 Fund established in section eleven, article fifteen of this
15 chapter.

16 (b) Authorized representatives of the Department have
17 the right, upon presentation of proper identification, to
18 enter upon any property for the purpose of conducting
19 studies or exploratory work to determine the existence of
20 adverse effects of an open dump, to determine the feasibility of the reclamation or prevention of such adverse effects
21 and to conduct reclamation activities provided herein.
22 Such entry is an exercise of the police power of the state
23 and for the protection of public health, safety and general
24 welfare and is not an act of condemnation of property or
25 trespass thereon. Nothing contained in this section
26 eliminates any obligation to follow any process that may
27 be required by law.
28

§22-15A-8. Waste tires prohibited in certain places; penalty.

1 The Waste Tire Remediation Program heretofore under
2 the jurisdiction of the Division of Highways is transferred
3 to the Department of Environmental Protection effective
4 upon enactment of this article by the Legislature during
5 the regular session of two thousand five.

6 (a) No person shall, within this state, place, deposit or
7 abandon any waste tire or part thereof upon the right-of-
8 way of any public highway or upon any other public
9 property nor deposit or abandon any waste tire or part
10 thereof upon any private property unless it is at a licensed
11 monofill, solid waste facility or at any other business
12 authorized by the Department of Environmental Protection to accept, process, manufacture or remanufacture
13 wastetires: *Provided*, That the Secretary may temporarily
14 accumulate as many waste tires as he or she deems necessary at any location or locations necessary to effectuate
15 the purposes of this article.
16
17

18 (b) No person, except those persons who have received
19 and maintain a valid permit or license from the state for
20 the operation of a solid waste facility, waste tire monofill,
21 waste tire processing facility, or other such permitted
22 activities, shall accumulate more than one hundred waste

23 tires for beneficial use without obtaining a license or
24 permit from the Department of Environmental Protection.

25 (c) Any person who violates any provision of this section
26 shall be guilty of creating an open dump and subject to
27 enforcement actions or prosecution under the provisions of
28 article fifteen of this chapter.

**§22-15A-9. Creation of the A. James Manchin Fund; proceeds
from sale of waste tires; fee on issuance of certifi-
cate of title.**

1 (a) There is continued in the State Treasury a special
2 revenue fund known as the A. James Manchin Fund. All
3 moneys appropriated, deposited or accrued in this Fund
4 shall be used exclusively for remediation of waste tire piles
5 as required by this article, for the tire disposal program
6 established under section ten of this article or for the
7 purposes of subsection (h), section ten of this article or for
8 the purposes of subsection (c), section eleven of this article.
9 The Commissioner of the Division of Highways shall work
10 with and may use moneys in the fund to contract with the
11 Secretary of the Department of Environmental Protection
12 to accomplish the remediation of waste tire piles. The
13 Fund consists of the proceeds from the sale of waste tires;
14 fees collected by the Division of Motor Vehicles as pro-
15 vided in section sixteen, article ten, chapter seventeen-a of
16 this code; any federal, state or private grants; legislative
17 appropriations; loans; and any other funding source
18 available for waste tire remediation. Any unprogrammed
19 balance remaining in the Fund at the end of any state
20 fiscal year shall be transferred to the State Road Fund.

21 (b) No further collections or deposits shall be made after
22 the Commissioner of the Division of Highways certifies to
23 the Governor and the Legislature that the remediation of
24 all waste tire piles that were determined by the Commis-
25 sioner to exist on the first day of July, two thousand one,
26 has been completed and that all infrastructure bonds
27 issued by the Water Development Authority pursuant to

28 section seventeen-a, article fifteen-a, chapter thirty-one of
29 this code have been paid in full or legally defeased.

30 (c) If infrastructure bonds are not issued by the Water
31 Development Authority pursuant to section seventeen-a,
32 article fifteen-a, chapter thirty-one of this code to finance
33 infrastructure projects relating to waste tire processing
34 facilities located in this state on or before the thirty-first
35 day of December, two thousand six, all further collections
36 and deposits to the A. James Manchin Fund which are not
37 programmed for remediation or disposal shall be trans-
38 ferred to the state road fund at the end of each fiscal year.

**§22-15A-10. Department to administer funds for waste tire
remediation; rules authorized; duties of Secre-
tary.**

1 (a) The Department shall administer all funds made
2 available to the Department by legislative appropriation
3 or by funds made available by the Division of Highways,
4 as well as federal, state or private grants for remediation
5 of waste tire piles and for the proper disposal of waste
6 tires removed from waste tire piles.

7 (b) All authority to promulgate legislative rules neces-
8 sary to implement the provisions of this article is hereby
9 transferred from the Division of Highways to the Secre-
10 tary of the Department of Environmental Protection as of
11 the effective date of enactment of this section and article
12 during the two thousand five session of the Legislature.
13 Any legislative rules promulgated by the Commissioner of
14 the Division of Highways in furtherance of the waste tire
15 remediation program established in former article twenty-
16 four, chapter seventeen of this code shall remain in force
17 and effect as if promulgated by the Secretary until they
18 are amended in accordance with the provisions of article
19 three, chapter twenty-nine-a of this code.

20 (c) The Secretary also has the following powers:

21 (1) To apply and carry out the provisions of this article
22 and the rules promulgated under this article.

23 (2) To investigate, from time to time, the operation and
24 effect of this article and of the rules promulgated under
25 this article and to report his or her findings and recom-
26 mendations to the Legislature and the Governor.

27 (d) On or before the first day of July, two thousand six,
28 the Secretary shall determine the location, approximate
29 size and potential risk to the public of all waste tire piles
30 in the state and establish, in descending order, a waste tire
31 remediation list.

32 (e) The Secretary may contract with the Department of
33 Health and Human Resources or the Division of Correc-
34 tions, or both, to remediate or assist in remediation of
35 waste tire piles throughout the state. Use of available
36 Department of Health and Human Resources and the
37 Division of Corrections work programs shall be given
38 priority status in the contract process so long as such
39 programs prove a cost-effective method of remediating
40 waste tire piles.

41 (f) Waste tire remediation shall be stopped upon the
42 discovery of any potentially hazardous material at a
43 remediation site. The Department shall respond to the
44 discovery in accordance with the provisions of article
45 nineteen of this chapter.

46 (g) The Secretary may establish a tire disposal program
47 within the Department to provide for a cost effective and
48 efficient method to accept passenger car and light truck
49 waste tires at locations designated by the Department that
50 have sufficient space for temporary storage of waste tires
51 and personnel to accept and handle waste tires. The
52 Secretary may pay a fee for each tire an individual West
53 Virginia resident or West Virginia business brings to the
54 Department. The Secretary may establish a limit on the
55 number of tires an individual or business may be paid for

56 during any calendar month. The Secretary may in his or
57 her discretion authorize commercial businesses to partici-
58 pate in the collection program: *Provided*, That no person
59 or business who has a waste tire pile subject to
60 remediation under this article may participate in this
61 program.

62 (h) The Commissioner of the Division of Highways may
63 pledge not more than two and one-half million dollars
64 annually of the moneys appropriated, deposited or accrued
65 in the A. James Manchin Fund created by section nine of
66 this article to the payment of debt service, including the
67 funding of reasonable reserves, on bonds issued by the
68 Water Development Authority pursuant to section seven-
69 teen-a, article fifteen-a, chapter thirty-one of this code to
70 finance infrastructure projects relating to waste tire
71 processing facilities located in this state: *Provided*, That
72 a waste tire processing facility shall be determined by the
73 Solid Waste Management Board, established pursuant to
74 the provisions of article three, chapter twenty-two-c of
75 this code, to meet all applicable federal and state environ-
76 mental laws and rules and to aid the state in efforts to
77 promote and encourage recycling and use of constituent
78 component parts of waste tires in an environmentally
79 sound manner: *Provided, however*, That the waste tire
80 processing facility shall have a capital cost of not less than
81 three hundred million dollars and the council for commu-
82 nity and economic development shall determine that the
83 waste tire processing facility is a viable economic develop-
84 ment project of benefit to the state's economy.

§22-15A-11. Disposal of waste tires.

1 (a) The Department may sell waste tires collected during
2 remediation of waste tire piles at public auction or to a
3 waste tire monofill, waste tire processing facility or
4 business authorized by the Department of Environmental
5 Protection to accept, store, use or process waste tires.

6 (b) If there is no market in West Virginia for the sale of
7 waste tires the Department may sell them at any available
8 market.

9 (c) If there is no market for the sale of waste tires the
10 Department may dispose of them in any lawful manner.

§22-15A-12. Remediation; liability for remediation and court costs.

1 (a) Any person who has, prior or subsequent to the
2 effective date of this act, illegally disposed of waste tires
3 or has waste tires illegally disposed on his or her property
4 shall be liable for:

5 (1) All costs of removal or remedial action incurred by
6 the Department;

7 (2) Any other necessary costs of remediation, including
8 properly disposing of waste tires and damage to adjacent
9 property owners; and

10 (3) All costs incurred in bringing civil actions under this
11 article.

12 (b) The Department shall notify any person who owns
13 real property or rights to property where a waste tire pile
14 is located that remediation of the waste tire pile is neces-
15 sary. The Department shall make and enter an order
16 directing such person or persons to remove and properly
17 dispose of the waste tires. The Department shall set a time
18 limit for completion of the remediation. The order shall be
19 served by registered or certified mail, return receipt
20 requested, or by a county sheriff or deputy sheriff.

21 (c) If the remediation is not completed within the time
22 limit or the person cannot be located or the person notifies
23 the Department that he or she is unable to comply with the
24 order, the Department may expend funds, as provided
25 herein, to complete the remediation. Any amounts so
26 expended shall be promptly repaid by the person or
27 persons responsible for the waste tire pile. Any person

28 owing remediation costs or damages shall be liable at law
29 until such time as all costs or damages are fully paid.

30 (d) Authorized representatives of the Department have
31 the right, upon presentation of proper identification, to
32 enter upon any property for the purpose of conducting
33 studies or exploratory work to determine the existence of
34 adverse effects of a waste tire pile, to determine the
35 feasibility of the remediation or prevention of such adverse
36 effects and to conduct remediation activities provided
37 herein. Such entry is an exercise of the police power of the
38 state and for the protection of public health, safety and
39 general welfare and is not an act of condemnation of
40 property or trespass thereon. Nothing contained in this
41 section eliminates any obligation to follow any process
42 that may be required by law.

43 (e) There is hereby created a statutory lien upon all real
44 property and rights to the property from which a waste
45 tire pile was remediated for all reclamation costs and
46 damages incurred by the Department. The lien created by
47 this section shall arise at the later of the following:

48 (1) The time costs are first incurred by the Department;
49 or

50 (2) The time the person is provided, by certified or
51 registered mail or personal service, written notice as
52 required by this section.

53 The lien shall continue until the liability for the costs or
54 judgment against the property is satisfied.

55 (f) Any person, who is a bona fide purchaser of real
56 property prior to the first day of July, two thousand one,
57 who did not cause, permit or profit from the illegal
58 disposal of waste tires on the property is only liable for the
59 costs of remediation to the extent that the fair market
60 value of the property, when remediation is completed,
61 exceeds the fair market value of the property that existed
62 on the first day of July, two thousand one. The Depart-

63 ment shall have a cause of action against any previous
64 owner who caused, permitted, contributed or profited from
65 the illegal disposal of waste tires on the property for the
66 difference in the amount recovered from the purchaser and
67 the cost of remediation.

68 (g) Liens created by this section shall be duly recorded
69 in the office of the clerk of the county commission in the
70 county where the real property is located and be liens of
71 equal dignity, rank and priority with the lien on such
72 premises of state, county, school and municipal taxes for
73 the amount thereof upon the real property served. The
74 Department shall have the power and authority to enforce
75 such liens in a civil action to recover the money due for
76 remediation costs and damages plus court fees and costs
77 and reasonable attorney's fees.

78 (h) The Department may foreclose upon the premises by
79 bringing a civil action, in the circuit court of the county
80 where the property is located, for foreclosure and an order
81 to sell the property to satisfy the lien.

82 (i) Any proceeds from any sale of property obtained as
83 a result of execution of a lien or judgment under this
84 section for remediation costs, excluding costs of obtaining
85 judgment and perfecting the lien, shall be deposited into
86 the A. James Manchin Fund of the State Treasury.

87 (j) The provisions of this section do not apply and no lien
88 may attach to the right-of-way, easement or other prop-
89 erty interest of a utility, whether electric, gas, water,
90 sewer, telephone, television cable or other public service,
91 unless the utility contributed to the illegal tire pile.

92 (k) Upon determining the existence of a waste tire pile,
93 the Department shall file a notice of the location of the
94 waste tire pile in the office of the county clerk in the
95 county where property containing a waste tire pile is
96 situate. The Department shall immediately file the notice
97 for all property known to have waste tire piles as of the

98 day the Legislature enacted the amendment to this section
99 during the two thousand five legislative session. The
100 notice shall contain the property owner's name, a location
101 and description of the property and the waste tire pile and
102 the potential liability for remediation. The county clerk
103 shall record the notice in the same manner as a lien and
104 index the notice by the name of the property owner.

§22-15A-13. Injunctive relief; additional remedy.

1 In addition to all other remedies provided in this article,
2 the Attorney General of this state, the Department, the
3 prosecuting attorney of any county where any violation of
4 any provision of this article occurs, or any citizen, resident
5 or taxpayer of the county where any violation of any
6 provision of this article occurs, may apply to the circuit
7 court, or the judge thereof in vacation, of the county where
8 the alleged violation occurred, for an injunction to re-
9 strain, prevent or abate the maintenance and storage of
10 waste tires in violation of any provision of this article, or
11 the violation of any other provision of this article. In
12 seeking an injunction, it is not necessary for the Secretary
13 or any state agency seeking an injunction under this
14 section to post bond.

§22-15A-14. Authority of Commissioner of Bureau for Public Health.

1 Although the Secretary is primarily responsible for
2 remediation of waste tire piles under the provisions of this
3 article, the Commissioner of the Bureau for Public Health
4 may enforce the public health laws in any instance where
5 the Commissioner of the Bureau for Public Health deter-
6 mines there is an imminent and substantial endangerment
7 to the public health.

§22-15A-15. Continuation of waste tire remediation program.

1 The waste tire remediation program shall continue to
2 exist, pursuant to the provisions of article ten, chapter
3 four of this code until the first day of July, two thousand

4 six, unless sooner terminated, continued or reestablished
5 pursuant to the provisions of that article.

§22-15A-16. Recycling goals.

1 By the first day of January, two thousand ten, it is the
2 goal of this state to reduce the disposal of municipal solid
3 waste by fifty percent of the amount of per capita solid
4 waste disposed of in one thousand nine hundred
5 ninety-one.

§22-15A-17. Recycling plans.

1 (a) Each county or regional solid waste authority, as
2 part of the comprehensive litter and solid waste control
3 plan required pursuant to the provisions of section eight,
4 article four, chapter twenty-two-c of this code, shall
5 prepare and adopt a comprehensive recycling plan to assist
6 in the implementation of the recycling goals in section
7 sixteen of this article.

8 (b) Each recycling plan required by this section shall
9 include, but not be limited to:

10 (1) Designation of the recyclable materials that can be
11 most effectively source separated in the region or county,
12 which shall include at least three recyclable materials; and

13 (2) Designation of potential strategies for the collection,
14 marketing and disposition of designated source separated
15 recyclable materials in each region or county.

**§22-15A-18. Establishment of county recycling programs for
solid waste; petition for referendum; ballot
contents; election procedure; effect of such
election.**

1 (a) On or before the eighteenth day of October, one
2 thousand nine hundred ninety-two, each municipality
3 described in subsection (b) of this section shall submit a
4 proposal to the Solid Waste Management Board, consistent
5 with the provisions of this section, describing the estab-

6 lishment and implementation of the mandatory recycling
7 program. The Solid Waste Management Board shall
8 review the submitted plans for consistency with the
9 criteria provided in this section, the county or regional
10 solid waste management plan and the statewide manage-
11 ment plan. The Solid Waste Management Board may
12 make suggested changes to the plan and shall provide
13 technical assistance to the municipalities in the develop-
14 ment of the plans.

15 (b) On or before the eighteenth day of October, one
16 thousand nine hundred ninety-three, each municipality
17 with a population of ten thousand or more people, as
18 determined by the most recent decennial census by the
19 Bureau of the Census of the United States Department of
20 Commerce, shall establish and commence implementation
21 of a source separation and curbside collection program for
22 recyclable materials. Implementation shall be phased in
23 by the first day of July, one thousand nine hundred ninety-
24 five. Such program shall include, at a minimum, the
25 following:

26 (1) An ordinance adopted by the governing body of the
27 municipality requiring that each person, partnership,
28 corporation or other entity in the municipality shall
29 separate at least three recyclable materials, as deemed
30 appropriate by the municipality, from other solid waste:
31 *Provided*, That the list of recyclables to be separated may
32 be adjusted according to whether the generator is residen-
33 tial, commercial or other type of establishment.

34 (2) A scheduled day, at least one per month, during
35 which separated materials are to be placed at the curbside,
36 or similar location, for collection.

37 (3) A system that collects recyclable materials from the
38 curbside, or similar location, at least once per month:
39 *Provided*, That to encourage full participation, the pro-
40 gram shall, to the maximum extent possible, provide for
41 the collection of recyclables at the same rate of frequency,

42 and simultaneous with, the regular collection of solid
43 waste.

44 (4) Provisions to ensure compliance with the ordinance,
45 including incentives and penalties.

46 (5) A comprehensive public information and education
47 program covering the importance and benefits of recy-
48 cling, as well as the specific features and requirements of
49 the recycling program. As part of the education program,
50 each municipality shall, at a minimum, notify all persons
51 occupying residential, commercial, institutional or other
52 premises within its boundaries of the requirements of the
53 program, including how the system will operate, the dates
54 of collection, the responsibilities of persons within the
55 municipality and incentives and penalties.

56 (6) Consultation with the county or regional solid waste
57 authority in which the municipality is located to avoid
58 duplication, ensure coordination of solid waste programs
59 and maximize the market for recyclables.

60 (c) Notwithstanding the provisions of subsection (b) of
61 this section, a comprehensive recycling program for solid
62 waste may be established in any county of this state by
63 action of a county commission in accordance with the
64 provisions of this section. Such program shall require:

65 (1) That, prior to collection at its source, all solid waste
66 shall be segregated into separate identifiable recyclable
67 materials by each person, partnership, corporation and
68 governmental agency subscribing to a solid waste collec-
69 tion service in the county or transporting solid waste to a
70 commercial solid waste facility in the county;

71 (2) Each person engaged in the commercial collection,
72 transportation, processing or disposal of solid waste
73 within the county shall accept only solid waste from which
74 recyclable materials in accordance with the county's
75 comprehensive recycling program have been segregated;
76 and

77 (3) That the provisions of the recycling plan prepared
78 pursuant to section seventeen of this article shall, to the
79 extent practicable, be incorporated in the county's com-
80 prehensive recycling program.

81 (d) For the purposes of this article, recyclable materials
82 shall include, but not be limited to, steel and bimetallic
83 cans, aluminum, glass, paper and such other solid waste
84 materials as may be specified by either the municipality or
85 county commission with the advice of the county or
86 regional solid waste authority.

87 (e) A comprehensive recycling program for solid waste
88 may be established in any county of this state by: (1) A
89 petition filed with the county commission bearing the
90 signatures of registered voters of the county equal to not
91 less than five percent of the number of votes cast within
92 the county for Governor at the preceding gubernatorial
93 election; and (2) approval by a majority of the voters in a
94 subsequent referendum on the issue. A referendum to
95 determine whether it is the will of the voters of a county
96 that a comprehensive recycling program for solid waste be
97 established in the county may be held at any regular
98 primary or general election or in conjunction with any
99 other countywide election. Any election at which the
100 question of establishing a policy of comprehensive recy-
101 cling for solid waste is voted upon shall be held at the
102 voting precincts established for holding primary or general
103 elections. All of the provisions of the general election
104 laws, when not in conflict with the provisions of this
105 article, shall apply to voting and elections hereunder,
106 insofar as practicable. The Secretary of State shall
107 prescribe the form of the petition which shall include the
108 printed name, address and date of birth of each person
109 whose signature appears on the petition. Upon verifica-
110 tion of the required number of signatures on the petition,
111 the county commission shall, not less than seventy days
112 before the election, order that the issue be placed on the
113 ballot and referendum held at the next primary, general or

114 special election to determine whether it is the will of the
115 voters of the county that a policy of comprehensive
116 recycling of solid waste be established in the county:
117 *Provided*, That the petition bearing the necessary signa-
118 tures has been filed with the county commission at least
119 one hundred days prior to the election.

120 The ballot, or the ballot labels where voting machines
121 are used, shall have printed thereon substantially the
122 following:

123 "Shall the County Commission be required to establish
124 a comprehensive recycling program for solid waste in
125 _____ County, West Virginia?

126 ☐ For Recycling

127 ☐ Against Recycling

128 (Place a cross mark in the square opposite your choice.)"

129 If a majority of legal votes cast upon the question be for
130 the establishment of a policy of comprehensive recycling
131 of solid waste, the county commission shall, after the
132 certification of the results of the referendum, thereafter
133 adopt an ordinance, within one hundred eighty days of
134 certification, establishing a comprehensive recycling
135 program for solid waste in the county: *Provided*, That
136 such program shall be implemented and operational no
137 later than twelve months following certification. If a
138 majority of the legal votes cast upon the question be
139 against the establishment of a policy of comprehensive
140 recycling of solid waste, the policy shall not take effect,
141 but the question may again be submitted to a vote at any
142 subsequent election in the manner herein provided.

143 (f) A comprehensive recycling program for solid waste
144 established by petition and referendum may be rescinded
145 only pursuant to the procedures set out herein to establish
146 the program.

147 To rescind the program, the ballot, or the ballot labels
148 where voting machines are used, shall have printed
149 thereon substantially the following:

150 "Shall the County Commission be required to terminate
151 the comprehensive recycling program for solid waste in
152 _____ County, West Virginia?

153 ☐ Continue Recycling

154 ☐ End Recycling

155 (Place a cross mark in the square opposite your choice.)"

156 (g) If a majority of legal votes cast upon the question be
157 for the termination of a policy of comprehensive recycling
158 of solid waste previously established in the county, the
159 county commission shall, after the certification of the
160 results of the referendum, thereafter rescind by ordinance
161 the comprehensive recycling program for solid waste in the
162 county within ninety days of certification. If a majority of
163 the legal votes cast upon the question be for the continua-
164 tion of the policy of comprehensive recycling of solid
165 waste, the ordinance shall not be rescinded, but the
166 question may again be submitted to a vote at any subse-
167 quent election in the manner herein provided.

168 (h) In the case of any municipality having a population
169 greater than thirty thousand persons, as indicated by the
170 most recent decennial census conducted by the United
171 States, the governing body of such municipality may by
172 ordinance establish a materials recovery facility in lieu of
173 or in addition to the mandatory recycling program re-
174 quired under the provisions of this section: *Provided*, That
175 a materials recovery facility shall be subject to approval
176 by both the Public Service Commission and the Solid
177 Waste Management Board upon a finding by both the
178 Public Service Commission and the Solid Waste Manage-
179 ment Board that the establishment of a materials recovery
180 facility will not hinder, and will be consistent with, the
181 purposes of this article.

**§22-15A-19. Recycling assessment fee; regulated motor carriers;
dedication of proceeds; criminal penalties.**

1 (a) *Imposition.* – A recycling assessment fee is hereby
2 levied and imposed upon the disposal of solid waste at all
3 solid waste disposal facilities in this state, to be collected
4 at the rate of two dollars per ton or part of a ton of solid
5 waste. The fee imposed by this section is in addition to all
6 other fees levied by law.

7 (b) *Collection, return, payment and records.* – The
8 person disposing of solid waste at the solid waste disposal
9 facility shall pay the fee imposed by this section, whether
10 or not that person owns the solid waste, and the fee shall
11 be collected by the operator of the solid waste facility who
12 shall remit it to the Tax Commissioner:

13 (1) The fee imposed by this section accrues at the time
14 the solid waste is delivered to the solid waste disposal
15 facility;

16 (2) The operator shall remit the fee imposed by this
17 section to the Tax Commissioner on or before the fifteenth
18 day of the month next succeeding the month in which the
19 fee accrued. Upon remittance of the fee, the operator shall
20 file returns on forms and in the manner as prescribed by
21 the Tax Commissioner;

22 (3) The operator shall account to the state for all fees
23 collected under this section and shall hold them in trust
24 for the state until they are remitted to the Tax Commis-
25 sioner;

26 (4) If any operator fails to collect the fee imposed by this
27 section, he or she is personally liable for the amount that
28 he or she failed to collect, plus applicable additions to tax,
29 penalties and interest imposed by article ten, chapter
30 eleven of this code;

31 (5) Whenever any operator fails to collect, truthfully
32 account for, remit the fee or file returns with the fee as

33 required in this section, the Tax Commissioner may serve
34 written notice requiring the operator to collect the fees
35 which become collectible after service of the notice, to
36 deposit the fees in a bank approved by the Tax Commis-
37 sioner, in a separate account, in trust for and payable to
38 the Tax Commissioner, and to keep the amount of the fees
39 in the account until remitted to the Tax Commissioner.
40 The notice remains in effect until a notice of cancellation
41 is served on the operator or owner by the Tax Commis-
42 sioner,

43 (6) Whenever the owner of a solid waste disposal facility
44 leases the solid waste facility to an operator, the operator
45 is primarily liable for collection and remittance of the fee
46 imposed by this section and the owner is secondarily liable
47 for remittance of the fee imposed by this section. How-
48 ever, if the operator fails, in whole or in part, to discharge
49 his or her obligations under this section, the owner and the
50 operator of the solid waste facility are jointly and sever-
51 ally responsible and liable for compliance with the provi-
52 sions of this section;

53 (7) If the operator or owner responsible for collecting the
54 fee imposed by this section is an association or corpora-
55 tion, the officers of the association or corporation are
56 liable, jointly and severally, for any default on the part of
57 the association or corporation, and payment of the fee and
58 any additions to tax, penalties and interest imposed by
59 article ten, chapter eleven of this code may be enforced
60 against them and against the association or corporation
61 which they represent; and

62 (8) Each person disposing of solid waste at a solid waste
63 disposal facility and each person required to collect the fee
64 imposed by this section shall keep complete and accurate
65 records in the form required by the Tax Commissioner in
66 accordance with the rules of the Tax Commissioner.

67 (c) *Regulated motor carriers.* - The fee imposed by this
68 section is a necessary and reasonable cost for motor

69 carriers of solid waste subject to the jurisdiction of the
70 Public Service Commission under chapter twenty-four-a
71 of this code. Notwithstanding any provision of law to the
72 contrary, upon the filing of a petition by an affected motor
73 carrier, the Public Service Commission shall, within
74 fourteen days, reflect the cost of the fee in the motor
75 carrier's rates for solid waste removal service. In calculat-
76 ing the amount of the fee to the motor carrier, the Com-
77 mission shall use the national average of pounds of waste
78 generated per person per day as determined by the United
79 States Environmental Protection Agency.

80 (d) *Definition.* - For purposes of this section, "Solid
81 Waste Disposal Facility" means any approved solid waste
82 facility or open dump in this state and includes a transfer
83 station when the solid waste collected at the transfer
84 station is not finally disposed of at a solid waste facility
85 within this state that collects the fee imposed by this
86 section.

87 Nothing in this section authorizes in any way the
88 creation or operation of or contribution to an open dump.

89 (e) *Exemptions.* -The following transactions are exempt
90 from the fee imposed by this section:

91 (1) Disposal of solid waste at a solid waste facility by the
92 person who owns, operates or leases the solid waste
93 disposal facility if it is used exclusively to dispose of waste
94 originally produced by that person in his or her regular
95 business or personal activities or by persons utilizing the
96 facility on a cost-sharing or nonprofit basis;

97 (2) Reuse or recycling of any solid waste; and

98 (3) Disposal of residential solid waste by an individual
99 not in the business of hauling or disposing of solid waste
100 on the days and times designated by the Secretary by rule
101 as exempt from the fee imposed pursuant to section eleven,
102 article fifteen, chapter twenty-two of this code.

103 (f) *Procedure and administration.* - Notwithstanding
104 section three, article ten, chapter eleven of this code, each
105 and every provision of the West Virginia Tax Procedure
106 and Administration Act set forth in article ten, chapter
107 eleven of this code applies to the fee imposed by this
108 section with like effect as if the act were applicable only to
109 the fee imposed by this section and were set forth in
110 extenso in this section.

111 (g) *Criminal penalties.* - Notwithstanding section two,
112 article nine, chapter eleven of this code, sections three
113 through seventeen, article nine, chapter eleven of this code
114 apply to the fee imposed by this section with like effect as
115 if the sections were the only fee imposed by this section
116 and were set forth in extenso in this section.

117 (h) *Dedication of proceeds.* - The proceeds of the fee
118 collected pursuant to this section shall be deposited by the
119 Tax Commissioner, at least monthly, in a special revenue
120 account designated as the Recycling Assistance Fund
121 which is hereby continued and transferred to the Depart-
122 ment of Environmental Protection. The Secretary shall
123 allocate the proceeds of the fund as follows:

124 (1) Fifty percent of the total proceeds shall be provided
125 in grants to assist municipalities, counties and other
126 interested parties in the planning and implementation of
127 recycling programs, public education programs and
128 recycling market procurement efforts, established pursu-
129 ant to this article. The Secretary shall promulgate rules,
130 in accordance with chapter twenty-nine-a of this code,
131 containing application procedures, guidelines for eligibil-
132 ity, reporting requirements and other matters considered
133 appropriate: *Provided,* That persons responsible for
134 collecting, hauling or disposing of solid waste who do not
135 participate in the collection and payment of the solid
136 waste assessment fee imposed by this section in addition
137 to all other fees and taxes levied by law for solid waste
138 generated in this state which is destined for disposal, shall

139 not be eligible to receive grants under the provisions of
140 this article;

141 (2) Twelve and one-half percent of the total proceeds
142 shall be expended for personal services and benefit
143 expenses of full-time salaried conservation officers;

144 (3) Twelve and one-half percent of the total proceeds
145 shall be directly allocated to the solid waste planning
146 fund;

147 (4) Twelve and one-half percent of the total proceeds
148 shall be transferred to the solid waste reclamation and
149 environmental response fund, established pursuant to
150 section eleven, article fifteen, chapter twenty-two of this
151 code, to be expended by the Department of Environmental
152 Protection to assist in the funding of the pollution preven-
153 tion and open dumps program (PPOD) which encourages
154 recycling, reuse, waste reduction and clean-up activities;
155 and

156 (5) Twelve and one-half percent of the total proceeds
157 shall be deposited in the hazardous waste emergency
158 response fund established in article nineteen of this
159 chapter.

§22-15A-20. Establishment of state recycling program for solid waste.

1 (a) In the absence of either a municipal or a comprehen-
2 sive county recycling plan pursuant to section eighteen of
3 this article, all agencies and instrumentalities of the state,
4 all primary and secondary schools, where practicable, and
5 private colleges and universities shall implement programs
6 to recycle solid waste. To carry out the purposes of this
7 section, any affected party may be eligible to receive
8 grants pursuant to subdivision (1), subsection (h), section
9 nineteen of this article. Such programs shall include, but
10 not be limited to, the following:

11 (1) Source separation of at least two recyclable materi-
12 als; and

13 (2) In the absence of either a municipal program or a
14 comprehensive county recycling plan pursuant to section
15 eighteen of this article, collection and transportation of
16 source separated recycled materials to an appropriate
17 location.

18 (b) For purposes of this section, the Department shall be
19 designated the lead agency to ensure proper compliance
20 and coordination of any such recycling program.

§22-15A-21. Procurement of recycled products.

1 (a) It is the policy of the State of West Virginia that, to
2 the maximum extent possible, all agencies and instrumen-
3 talities of the state purchase recycled products. The goal
4 of the state is to achieve a recycled product mix on future
5 purchases.

6 (b) In furtherance of the aforesaid goal, the Secretary of
7 the Department of Administration in consultation with the
8 Secretary shall develop a comprehensive procurement
9 program for recycled products. The program shall include,
10 but not be limited to:

11 (1) A review, and subsequent revision, of existing
12 procurement procedures and bid specifications to remove
13 language that discriminates against recycled products;

14 (2) A review, and subsequent revision, of existing
15 procurement procedures and bid specifications to ensure
16 that, to the maximum extent possible, all agencies and
17 instrumentalities of the state purchase recycled products:
18 *Provided*, That recycled paper products shall be given a
19 price preference of ten percent: *Provided, however*, That
20 priority shall be given to paper products with the highest
21 postconsumer content:

22 (3) A plan to eliminate, to the maximum extent possible,
23 the use of disposable and single-use products; and

24 (4) A requirement that all agencies and instrumentalities
25 of the state use compost in all land maintenance and

26 landscaping activities: *Provided*, That the use of com-
27 posted or deep stacked poultry litter products, certified by
28 the Commissioner of Agriculture as being free from
29 organisms that are not found in poultry litter produced in
30 this state, have priority unless determined to be economi-
31 cally unfeasible by the agency or instrumentality.

32 (c) The Secretary shall prepare and submit an annual
33 report on the thirty-first day of January of each year
34 summarizing the program's accomplishments, prospects
35 for the future, and any recommendations. The report shall
36 be submitted to the Governor, Speaker of the House of
37 Delegates and President of the Senate.

**§22-15A-22. Prohibition on the disposal of certain items; plans
for the proper handling of said items required.**

1 (a) Effective the first day of June, one thousand nine
2 hundred ninety-four, it shall be unlawful to dispose of
3 lead-acid batteries in a solid waste landfill in West
4 Virginia; effective the first day of June, one thousand nine
5 hundred ninety-six, it shall be unlawful to dispose of tires
6 in a solid waste landfill in West Virginia except for waste
7 tires collected as part of the Department's waste tire
8 remediation projects or other collection efforts in accor-
9 dance with the provisions of this article or the pollution
10 prevention program and open dump program or other
11 state-authorized remediation or clean up programs:
12 *Provided*, That waste tires may be disposed of in solid
13 waste landfills only when the state agency authorizing the
14 remediation or clean up program has determined there is
15 no reasonable alternative available.

16 (b) Effective the first day of January, one thousand nine
17 hundred ninety-seven, it shall be unlawful to dispose of
18 yard waste, including grass clippings and leaves, in a solid
19 waste facility in West Virginia: *Provided*, That such
20 prohibitions do not apply to a facility designed specifically
21 to compost such yard waste or otherwise recycle or reuse
22 such items: *Provided, however*, That reasonable and

23 necessary exceptions to such prohibitions may be included
24 as part of the rules promulgated pursuant to subsection (d)
25 of this section.

26 (c) No later than the first day of May, one thousand nine
27 hundred ninety-five, the Solid Waste Management Board
28 shall design a comprehensive program to provide for the
29 proper handling of yard waste and lead-acid batteries. No
30 later than the first day of May, one thousand nine hundred
31 ninety-four, a comprehensive plan shall be designed in the
32 same manner to provide for the proper handling of tires.

33 (d) No later than the first day of August, one thousand
34 nine hundred ninety-five, the Department shall promul-
35 gate rules, in accordance with chapter twenty-nine-a of
36 this code, as amended, to implement and enforce the
37 program for yard waste and lead-acid batteries designed
38 pursuant to subsection (c) of this section. No later than
39 the first day of August, two thousand, the Department
40 shall promulgate rules, in accordance with chapter
41 twenty-nine-a of said code, as amended, to implement and
42 enforce the program for tires designed pursuant to subsec-
43 tion (c) of this section.

44 (e) For the purposes of this section, "yard waste" means
45 grass clippings, weeds, leaves, brush, garden waste, shrub
46 or tree prunings and other living or dead plant tissues,
47 except that such materials which, due to inadvertent
48 contamination or mixture with other substances which
49 render the waste unsuitable for composting, shall not be
50 considered to be yard waste: *Provided*, That the same or
51 similar waste generated by commercial agricultural
52 enterprises is excluded.

53 (f) In promulgating the rules required by subsections (c)
54 and (d) of this section, yard waste, as described in subsec-
55 tion (e) of this section, the Department shall provide for
56 the disposal of yard waste in a manner consistent with one
57 or any combination of the following:

58 (1) Disposal in a publicly or privately operated commer-
59 cial or noncommercial composting facility.

60 (2) Disposal by composting on the property from which
61 domestic yard waste is generated or on adjoining property
62 or neighborhood property if consent is obtained from the
63 owner of the adjoining or neighborhood property.

64 (3) Disposal by open burning where such activity is not
65 prohibited by this code, rules promulgated hereunder or
66 municipal or county codes or ordinances.

67 (4) Disposal in a publicly or privately operated landfill,
68 only where none of the foregoing options are available.
69 Such manner of disposal will involve only small quantities
70 of domestic yard waste generated only from the property
71 of the participating resident or tenant.

§22-15A-23. Recycling facilities exemption.

1 Recycling facilities, as defined in section two, article
2 fifteen of this chapter, whose only function is to accept
3 free-of-charge, buy or transfer source-separated material
4 or recycled material for resale or transfer for further
5 processing are exempt from the provisions of said article
6 and article four of chapter twenty-two-c and sections
7 one-c and one-f, article two, chapter twenty-four of this
8 code.

**CHAPTER 22C. ENVIRONMENTAL RESOURCES;
BOARDS, AUTHORITIES, COMMISSIONS AND COMPACTS.**

ARTICLE 3. SOLID WASTE MANAGEMENT BOARD.

§22C-3-7. Development of state solid waste management plan.

1 On or before the first day of January, one thousand nine
2 hundred ninety-three, the Solid Waste Management Board
3 shall prepare an overall state plan for the proper manage-
4 ment of solid waste: *Provided*, That such plan shall be
5 consistent with the findings and purposes of article four of
6 this chapter and articles fifteen and fifteen-a, chapter

7 twenty-two of this code: *Provided, however,* That such
8 plan shall incorporate the county or regional plans devel-
9 oped pursuant to sections eight and twenty-four, article
10 four of this chapter, as amended: *Provided further,* That
11 such plan shall be updated every two years following its
12 initial preparation.

**§22C-3-24. Cooperation of board and enforcement agencies in
collecting and disposing of abandoned household
appliances and motor vehicles, etc.**

1 The provisions of this article are complementary to those
2 contained in article twenty-four, chapter fifteen-a of this
3 code and do not alter or diminish the authority of any
4 enforcement agency, as defined in section two thereof, to
5 collect and dispose of abandoned household appliances
6 and motor vehicles, inoperative household appliances and
7 junked motor vehicles and parts thereof, including tires.
8 The board and such enforcement agencies shall cooperate
9 fully with each other in collecting and disposing of such
10 solid waste.

ARTICLE 4. COUNTY AND REGIONAL SOLID WASTE AUTHORITIES.

**§22C-4-24. Commercial solid waste facility siting plan; facilities
subject to plan; criteria; approval by Solid Waste
Management Board; effect on facility siting;
public hearings; rules.**

1 (a) On or before the first day of July, one thousand nine
2 hundred ninety-one, each county or regional solid waste
3 authority shall prepare and complete a commercial solid
4 waste facilities siting plan for the county or counties
5 within its jurisdiction: *Provided,* That the Solid Waste
6 Management Board may authorize any reasonable exten-
7 sion of up to one year for the completion of the said siting
8 plan by any county or regional solid waste authority. The
9 siting plan shall identify zones within each county where
10 siting of the following facilities is authorized or prohib-
11 ited:

12 (1) Commercial solid waste facilities which may accept
13 an aggregate of more than ten thousand tons of solid waste
14 per month.

15 (2) Commercial solid waste facilities which shall accept
16 only less than an aggregate of ten thousand tons of solid
17 waste per month.

18 (3) Commercial solid waste transfer stations or commer-
19 cial facilities for the processing or recycling of solid waste.

20 The siting plan shall include an explanation of the
21 rationale for the zones established therein based on the
22 criteria established in subsection (b) of this section.

23 (b) The county or regional solid waste authority shall
24 develop the siting plan authorized by this section based
25 upon the consideration of one or more of the following
26 criteria: The efficient disposal of solid waste, including,
27 but not limited to, all solid waste which is disposed of
28 within the county or region regardless of its origin,
29 economic development, transportation infrastructure,
30 property values, groundwater and surface waters, geologi-
31 cal and hydrological conditions, aesthetic and environ-
32 mental quality, historic and cultural resources, the present
33 or potential land uses for residential, commercial, recre-
34 ational, environmental conservation or industrial purposes
35 and the public health, welfare and convenience. The
36 initial plan shall be developed based upon information
37 readily available. Due to the limited funds and time
38 available, the initial plan need not be an exhaustive and
39 technically detailed analysis of the criteria set forth above.
40 Unless the information readily available clearly estab-
41 lishes that an area is suitable for the location of a commer-
42 cial solid waste facility or not suitable for such a facility,
43 the area shall be designated as an area in which the
44 location of a commercial solid waste facility is tentatively
45 prohibited. Any person making an application for the
46 redesignation of a tentatively prohibited area shall make
47 whatever examination is necessary and submit specific

48 detailed information in order to meet the provision
49 established in subsection (g) of this section.

50 (c) Prior to completion of the siting plan, the county or
51 regional solid waste authority shall complete a draft siting
52 plan and hold at least one public hearing in each county
53 encompassed in said draft siting plan for the purpose of
54 receiving public comment thereon. The authority shall
55 provide notice of such public hearings and encourage and
56 solicit other public participation in the preparation of the
57 siting plan as required by the rules promulgated by the
58 Solid Waste Management Board for this purpose. Upon
59 completion of the siting plan, the county or regional solid
60 waste authority shall file said plan with the Solid Waste
61 Management Board.

62 (d) The siting plan takes effect upon approval by the
63 Solid Waste Management Board pursuant to the rules
64 promulgated for this purpose. Upon approval of the plan,
65 the Solid Waste Management Board shall transmit a copy
66 thereof to the Secretary of the Department of Environ-
67 mental Protection and to the clerk of the county commis-
68 sion of the county encompassed by said plan which county
69 clerk shall file the plan in an appropriate manner and shall
70 make the plan available for inspection by the public.

71 (e) Effective upon approval of the siting plan by the
72 Solid Waste Management Board, it is unlawful for any
73 person to establish, construct, install or operate a commer-
74 cial solid waste facility at a site not authorized by the
75 siting plan: *Provided*, That an existing commercial solid
76 waste facility which, on the eighth day of April, one
77 thousand nine hundred eighty-nine, held a valid solid
78 waste permit or compliance order issued by the Division of
79 Natural Resources pursuant to the former provisions of
80 article five-f, chapter twenty of this code may continue to
81 operate, but may not expand the spatial land area of the
82 said facility beyond that authorized by said solid waste
83 permit or compliance order and may not increase the
84 aggregate monthly solid waste capacity in excess of ten

85 thousand tons monthly unless such a facility is authorized
86 by the siting plan.

87 (f) The county or regional solid waste authority may,
88 from time to time, amend the siting plan in a manner
89 consistent with the requirements of this section for
90 completing the initial siting plan and the rules promul-
91 gated by the Solid Waste Management Board for the
92 purpose of such amendments.

93 (g) Notwithstanding any provision of this code to the
94 contrary, upon application from a person who has filed a
95 presiting notice pursuant to section thirteen, article
96 fifteen, chapter twenty-two of this code, the county or
97 regional solid waste authority or county commission, as
98 appropriate, may amend the siting plan by redesignating
99 a zone that has been designated as an area where a com-
100 mercial solid waste facility is tentatively prohibited to an
101 area where one is authorized. In such case, the person
102 seeking the change has the burden to affirmatively and
103 clearly demonstrate, based on the criteria set forth in
104 subsection (b) of this section, that a solid waste facility
105 could be appropriately operated in the public interest at
106 such location. The Solid Waste Management Board shall
107 provide, within available resources, technical support to a
108 county or regional solid waste authority, or county com-
109 mission as appropriate, when requested by such authority
110 or commission to assist it in reviewing an application for
111 any such amendment.

112 (h) The Solid Waste Management Board shall prepare
113 and adopt a siting plan for any county or regional solid
114 waste authority which does not complete and file with the
115 said state authority a siting plan in compliance with the
116 provisions of this section and the rules promulgated
117 thereunder. Any siting plan adopted by the Solid Waste
118 Management Board pursuant to this subsection shall
119 comply with the provisions of this section, and the rules
120 promulgated thereunder, and has the same effect as a
121 siting plan prepared by a county or regional solid waste

122 authority and approved by the Solid Waste Management
123 Board.

124 (i) The siting plan adopted pursuant to this section shall
125 incorporate the provisions of the litter and solid waste
126 control plan, as approved by the Solid Waste Management
127 Board pursuant to section eight of this article, regarding
128 collection and disposal of solid waste and the require-
129 ments, if any, for additional commercial solid waste
130 facility capacity.

131 (j) The solid waste management board is authorized and
132 directed to promulgate rules specifying the public partici-
133 pation process, content, format, amendment, review and
134 approval of siting plans for the purposes of this section.

135 (k) To the extent that current solid waste plans approved
136 by the board are approved as provided for in this section,
137 and in place on the effective date of this article, provisions
138 which limit approval for new or expanded solid waste
139 facilities based solely on local solid waste disposal needs
140 without consideration for national waste disposal needs
141 are disallowed as being in conflict with the public policy
142 of this article: *Provided*, That all other portions of the
143 solid waste management plans as established in the litter
144 and solid waste control plan as provided for in this section
145 and the comprehensive recycling plan as provided for in
146 section seventeen, article fifteen-a, chapter twenty-two of
147 this code are continued in full force and effect to the
148 extent that those provisions do not conflict with the
149 provisions of this article.

**§22C-4-25. Siting approval for solid waste facilities; effect on
facilities with prior approval.**

1 (a) It is the intent of the Legislature that all commercial
2 solid waste facilities operating in this state must receive
3 site approval at the local level, except for recycling
4 facilities, as defined in section twenty-three, article
5 fifteen-a, chapter twenty-two of this code, that are

6 specifically exempted by section twelve, article eleven,
7 chapter twenty of this code. Notwithstanding said intent,
8 facilities which obtained such approval from either a
9 county or regional solid waste authority, or from a county
10 commission, under any prior enactment of this code, and
11 facilities which were otherwise exempted from local site
12 approval under any prior enactment of this code, shall be
13 deemed to have satisfied such requirement. All other
14 facilities, including facilities which received such local
15 approval but which seek to expand spatial area or to
16 convert from a Class B facility to a Class A facility, shall
17 obtain such approval only in the manner specified in
18 sections twenty-six, twenty-seven and twenty-eight of this
19 article.

20 (b) In considering whether to issue or deny the certificate
21 of site approval as specified in sections twenty-six,
22 twenty-seven and twenty-eight of this article, the county
23 or regional solid waste authority shall base its determina-
24 tion upon the following criteria: The efficient disposal of
25 solid waste anticipated to be received or processed at the
26 facility, including solid waste generated within the county
27 or region, economic development, transportation infra-
28 structure, property values, groundwater and surface
29 waters, geological and hydrological conditions, aesthetic
30 and environmental quality, historic or cultural resources,
31 the present or potential land uses for residential, commer-
32 cial, recreational, industrial or environmental conservation
33 purposes and the public health, welfare and convenience.

34 (c) The county or regional solid waste authority shall
35 complete findings of fact and conclusions relating to the
36 criteria authorized in subsection (b) of this section which
37 support its decision to issue or deny a certificate of site
38 approval.

39 (d) The siting approval requirements for composting
40 facilities, materials recovery facilities and mixed waste
41 processing facilities shall be the same as those for other
42 solid waste facilities.

CHAPTER 31. CORPORATIONS.

ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.

§31-15A-17a. Infrastructure revenue bonds payable from A. James Manchin Fund.

1 Notwithstanding any other provision of this code to the
2 contrary, the Water Development Authority may issue, in
3 accordance with the provisions of section seventeen of this
4 article, infrastructure revenue bonds payable from the A.
5 James Manchin Fund created by section nine, article
6 fifteen-a, chapter twenty-two of this code and such other
7 sources as may be legally pledged for such purposes other
8 than the West Virginia Infrastructure Revenue Debt
9 Service Fund created by section seventeen of this article.

CHAPTER 49. CHILD WELFARE.

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-13. Disposition of juvenile delinquents; appeal.

1 (a) In aid of disposition of juvenile delinquents, the
2 juvenile probation officer assigned to the court shall, upon
3 request of the court, make an investigation of the environ-
4 ment of the juvenile and the alternative dispositions
5 possible. The court, upon its own motion, or upon request
6 of counsel, may order a psychological examination of the
7 juvenile. The report of such examination and other
8 investigative and social reports shall not be made avail-
9 able to the court until after the adjudicatory hearing.
10 Unless waived, copies of the report shall be provided to
11 counsel for the petitioner and counsel for the juvenile no
12 later than seventy-two hours prior to the dispositional
13 hearing.

14 (b) Following the adjudication, the court shall conduct
15 the dispositional proceeding, giving all parties an opportu-
16 nity to be heard. In disposition the court shall not be
17 limited to the relief sought in the petition and shall, in

18 electing from the following alternatives, consider the best
19 interests of the juvenile and the welfare of the public:

20 (1) Dismiss the petition;

21 (2) Refer the juvenile and the juvenile's parent or
22 custodian to a community agency for needed assistance
23 and dismiss the petition;

24 (3) Upon a finding that the juvenile is in need of ex-
25 tra-parental supervision: (A) Place the juvenile under the
26 supervision of a probation officer of the court or of the
27 court of the county where the juvenile has his or her usual
28 place of abode or other person while leaving the juvenile
29 in custody of his or her parent or custodian; and (B)
30 prescribe a program of treatment or therapy or limit the
31 juvenile's activities under terms which are reasonable and
32 within the child's ability to perform, including participa-
33 tion in the litter control program established pursuant to
34 section three, article fifteen-a, chapter twenty-two of this
35 code or other appropriate programs of community service;

36 (4) Upon a finding that a parent or custodian is not
37 willing or able to take custody of the juvenile, that a
38 juvenile is not willing to reside in the custody of his parent
39 or custodian or that a parent or custodian cannot provide
40 the necessary supervision and care of the juvenile, the
41 court may place the juvenile in temporary foster care or
42 temporarily commit the juvenile to the department or a
43 child welfare agency. The court order shall state that
44 continuation in the home is contrary to the best interest of
45 the juvenile and why; and whether or not the department
46 made a reasonable effort to prevent the placement or that
47 the emergency situation made such efforts unreasonable or
48 impossible. Whenever the court transfers custody of a
49 youth to the department, an appropriate order of financial
50 support by the parents or guardians shall be entered in
51 accordance with section five, article seven of this chapter
52 and guidelines promulgated by the Supreme Court of
53 Appeals;

54 (5) Upon a finding that the best interests of the juvenile
 55 or the welfare of the public require it, and upon an adjudi-
 56 cation of delinquency pursuant to subdivision (1), section
 57 four, article one of this chapter, the court may commit the
 58 juvenile to the custody of the Director of the Division of
 59 Juvenile Services for placement in a juvenile services
 60 facility for the treatment, instruction and rehabilitation of
 61 juveniles: *Provided*, That the court maintains discretion
 62 to consider alternative sentencing arrangements. Notwith-
 63 standing any provision of this code to the contrary, in the
 64 event that the court determines that it is in the juvenile's
 65 best interests or required by the public welfare to place the
 66 juvenile in the custody of the Division of Juvenile Services,
 67 the court shall provide the Division of Juvenile Services
 68 with access to all relevant court orders and records
 69 involving the underlying offense or offenses for which the
 70 juvenile was adjudicated delinquent, including sentencing
 71 and presentencing reports and evaluations, and provide
 72 the Division with access to school records, psychological
 73 reports and evaluations, medical reports and evaluations
 74 or any other such records as may be in the court's posses-
 75 sion as would enable the Division of Juvenile Services to
 76 better assess and determine the appropriate counseling,
 77 education and placement needs for the juvenile offender.
 78 Commitments shall not exceed the maximum term for
 79 which an adult could have been sentenced for the same
 80 offense and any such maximum allowable sentence to be
 81 served in a juvenile correctional facility may take into
 82 account any time served by the juvenile in a detention
 83 center pending adjudication, disposition or transfer. The
 84 order shall state that continuation in the home is contrary
 85 to the best interests of the juvenile and why; and whether
 86 or not the state department made a reasonable effort to
 87 prevent the placement or that the emergency situation
 88 made such efforts unreasonable or impossible; or

89 (6) After a hearing conducted under the procedures set
 90 out in subsections (c) and (d), section four, article five,
 91 chapter twenty-seven of this code, commit the juvenile to

92 a mental health facility in accordance with the juvenile's
93 treatment plan; the Director of the mental health facility
94 may release a juvenile and return him or her to the court
95 for further disposition. The order shall state that continu-
96 ation in the home is contrary to the best interests of the
97 juvenile and why; and whether or not the state department
98 made a reasonable effort to prevent the placement or that
99 the emergency situation made such efforts unreasonable or
100 impossible.

101 (c) The disposition of the juvenile shall not be affected
102 by the fact that the juvenile demanded a trial by jury or
103 made a plea of denial. Any dispositional order is subject
104 to appeal to the Supreme Court of Appeals.

105 (d) Following disposition, the court shall inquire
106 whether the juvenile wishes to appeal and the response
107 shall be transcribed; a negative response shall not be
108 construed as a waiver. The evidence shall be transcribed
109 as soon as practicable and made available to the juvenile
110 or his or her counsel, if the same is requested for purposes
111 of further proceedings. A judge may grant a stay of
112 execution pending further proceedings.

113 (e) Notwithstanding any other provision of this code to
114 the contrary, if a juvenile charged with delinquency under
115 this chapter is transferred to adult jurisdiction and there
116 tried and convicted, the court may make its disposition in
117 accordance with this section in lieu of sentencing such
118 person as an adult.

**§49-5-13b. Authority of the courts to order fines; revocation of
vehicle privileges and restitution.**

1 (a) In addition to the methods of disposition provided in
2 section thirteen of this article, the court may enter an
3 order imposing one or more of the following penalties,
4 conditions and limitations:

5 (1) Impose a fine not to exceed one hundred dollars upon
6 such child;

7 (2) Require the child to make restitution or reparation to
8 the aggrieved party or parties for actual damages or loss
9 caused by the offense for which the child was found to be
10 delinquent, or if the child does not make full restitution,
11 require the custodial parent or parents, as defined in
12 section two, article seven-a, chapter fifty-five, of the child
13 to make partial or full restitution to the victim to the
14 extent the child fails to make full restitution;

15 (3) Require the child to participate in a public service
16 project under such conditions as the court prescribes,
17 including participation in the litter control program
18 established pursuant to the authority of section three,
19 article fifteen-a, chapter twenty-two of this code;

20 (4) When the child is fifteen years of age or younger and
21 has been adjudged delinquent, the court may order that
22 the child is not eligible to be issued a junior probationary
23 operator's license or when the child is between the ages of
24 sixteen and eighteen years and has been adjudged delin-
25 quent, the court may order that the child is not eligible to
26 operate a motor vehicle in this state, and any junior or
27 probationary operator's license shall be surrendered to the
28 court. Such child's driving privileges shall be suspended
29 for a period not to exceed two years, and the clerk of the
30 court shall notify the Commissioner of the Division of
31 Motor Vehicles of such order.

32 (b) Nothing herein stated shall limit the discretion of the
33 court in disposing of a juvenile case: *Provided*, That the
34 juvenile shall not be denied probation or any other dispo-
35 sition pursuant to this article because the juvenile is
36 financially unable to pay a fine or make restitution or
37 reparation: *Provided, however*, That all penalties, condi-
38 tions and limitations imposed under this section shall be
39 based upon a consideration by the court of the seriousness
40 of the offense, the child's ability to pay and a program of
41 rehabilitation consistent with the best interests of the
42 child.

Enr. Com. Sub. for Com. Sub. for S. B. No. 426] 74

43 (c) Notwithstanding any other provisions of this code to
44 the contrary, in the event a child charged with delinquency
45 under this chapter is transferred to adult jurisdiction and
46 there convicted, the court may nevertheless, in lieu of
47 sentencing such person as an adult, make its disposition in
48 accordance with this section.

75 [Enr. Com. Sub. for Com. Sub. for S. B. No. 428

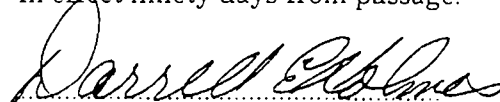
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



Chairman Senate Committee

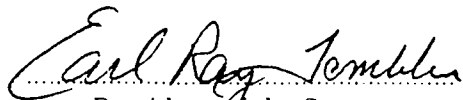

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

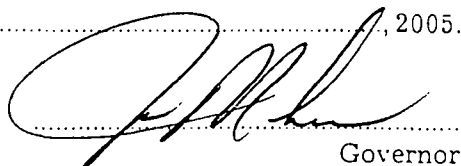

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker House of Delegates

The within is approved this the 3rd
Day of May, 2005.


Governor

PRESENTED TO THE
GOVERNOR

APR 29 2005

Time 9:40am

JANUARY

Term

FIFTEENTH

Day

JANUARY

1958

THURSDAY, JANUARY 30th, 1958

IN RE: LUBECK DISTRICT - PUBLIC SERVICE DISTRICT WITHIN WOOD COUNTY, WEST VIRGINIA.

Parkersburg, West Virginia

Jan. 30, 1958

The County Court of Wood County, West Virginia, met in regular session pursuant to law and to the rules of said court at the County Court House, Parkersburg, West Virginia, at 10 o'clock A. M. The meeting was called to order and the roll being called there were present Harry C. Nicely, President, presiding, and the following named commissioners: Guy M. Kincheloe and Malcolm B. Loudon.

Absent: NONE

This being the date fixed by prior action of the County Court for conducting the public hearing on the creation of the proposed Lubeck Public Service District, as contemplated and provided for in a resolution and order adopted by the County Court on 19th December, 1957, the president announced that all persons residing in or owning or having any interest in property in such proposed public service district desiring to be heard for or against the creation of said district would be heard and all such interested persons desiring to be heard were given full opportunity.

The County Court then further discussed the creation of said public service district, whereupon Malcolm B. Loudon introduced and caused to be read a proposed resolution and order, entitled:

"A RESOLUTION AND ORDER creating Lubeck

Public Service District in Wood County, West Virginia,"

and moved that all rules otherwise requiring deferred consideration or several readings be suspended and said proposed resolution and order be adopted. Guy M. Kincheloe seconded the motion and after due consideration the President put the question on the motion and the roll being called, the following voted:

Aye: Harry C. Nicely
Guy M. Kincheloe
Malcolm B. Loudon

Nay: NONE

Whereupon the President declared the motion duly carried and said resolution and order duly adopted. Malcolm B. Loudon introduced and caused to be read a proposed resolution and order, entitled:

"A RESOLUTION AND ORDER appointing members to

the public service board of the Lubeck Public Service District."

and moved that all rules otherwise requiring deferred consideration or several readings be suspended and said proposed resolution and order be adopted. Guy M. Kincheloe seconded the motion and after due consideration the President put the question on the motion and the roll being called, the following voted:

Aye: Harry C. Nicely
Guy M. Kincheloe
Malcolm B. Loudon

Nay: NONE

Whereupon the President declared the motion duly carried and said resolution and order duly adopted.

On motion and vote the meeting adjourned.

s/ Harry C. Nicely
President

Attest:

L. C. White
Clerk

A RESOLUTION AND ORDER CREATING
LUBECK PUBLIC SERVICE DISTRICT IN
WOOD COUNTY, WEST VIRGINIA

WHEREAS, the County Court of Wood County, West Virginia, did heretofore by a resolution and order adopted December 19, 1957, fix a date for a public hearing on the creation of the proposed Lubeck Public Service District and in and by said resolution and order provide that all persons residing in or owning or having any interest in property in the proposed public service district might appear before the County Court at this meeting and have the opportunity to be heard for and against the creation of said district; and,

WHEREAS, notice of this hearing was duly given in the manner provided and required by said resolution and order and by Article 13A of Chapter 16 of the West Virginia Code, and all interested persons have been afforded an opportunity of being heard for and against the creation of said district, but no written protest has been filed by the requisite number of qualified voters registered and residing within said proposed public service district and said County Court has given due consideration to all matters for which such hearing was offered; and,

WHEREAS, it is now deemed desirable by said County Court to adopt a resolution and order creating said district;

NOW, THEREFORE, Be It and It Is Hereby Resolved and Ordered by the County Court of Wood County, West Virginia, as follows:

Section 1. That a public service district within Wood County, West Virginia, is hereby created, and said district shall have the following boundaries:

Beginning at the Ohio River approximately one-half mile up stream from Blennerhassett Island at a point having a latitude of N. 39° 15' 58" and a longitude of W. 81° 35' 00", thence South 1.4 miles to a point having a latitude of N. 39° 14' 24" and a longitude of W. 81° 35' 00", thence West 1.73 miles to a point having a latitude of N. 39° 14' 24" and a longitude of W. 81° 36' 58", thence S. 37° 00' 00" W. 2.9 miles to a point having a latitude of N. 39° 12' 43" and a longitude of W. 81° 38' 53", thence West 1.80 miles to point having a latitude of N. 39° 12' 43" and a longitude of W. 81° 40' 55", thence to the Ohio River W. 32° 00' 00" W. 0.75 miles to a point having a latitude of N. 39° 13' 16" and a longitude of W. 81° 41' 22", thence along and with the Ohio River approximately 6.85 miles to the beginning.

Containing generally the communities of Marttown, Lubeck, Blennerhassett Heights and Washington together with contiguous areas. All within the magisterial district of Lubeck, Wood County, State of West Virginia, as shown upon a map prepared by J. H. Miles, Inc., Consulting Engineers, 1214 Myers Avenue, Dunbar, West Virginia, November 1957.

Section 2. That said public service district so created shall have the name and corporate title of "Lubeck Public Service District", and shall constitute a public corporation and political subdivision of the State of West Virginia having all of the rights and powers conferred on public service districts by the laws of the State of West Virginia, and particularly Article 13A of Chapter 16 of the West Virginia Code.

Section 3. That the County Court of Wood County, West Virginia, has determined that the territory within Wood County, West Virginia, having the heretofore above described boundaries,

ORDERS--Wood County Court West Virginia

JANUARY Term,

FIFTEENTH

Day

JANUARY

1958

THURSDAY, JANUARY 30th, 1958

is so situated that the construction or acquisition by purchase or otherwise and the maintenance, operation, improvement and extension of properties supplying both water and sewage services within such territory by said public service district will be conducive to the preservation of public health, comfort and convenience of such area.

ADOPTED BY THE COUNTY COURT Jan. 30, 1958.

s/ Harry C. Nicely,
President

Attest:

L. C. White
Clerk

A RESOLUTION AND ORDER APPOINTING
MEMBERS TO THE PUBLIC SERVICE BOARD
OF THE LUBECK PUBLIC SERVICE DISTRICT.

WHEREAS, the County Court of Wood County, West Virginia, did heretofore by resolution and order adopted Jan. 30, 1958, create the Lubeck Public Service District; and,

WHEREAS, under the provisions of Article 13A of Chapter 16 of the West Virginia Code the powers of said public service district shall be vested in and exercised by a public service board; and,

WHEREAS, since there is no city, incorporated town or other municipal corporation included within said district, it is provided by said Article 13A of Chapter 16 of the West Virginia Code that this County Court shall appoint three members of said board, who shall be persons residing within the district:

NOW, THEREFORE, Be It and It Is Hereby Resolved and Ordered by the County Court of Wood County, West Virginia, as follows:

Section 1. That the County Court of Wood County, West Virginia, hereby finds and determined that David T. Gorrell, Paul F. Somerville and Stafford J. McQuillin, are persons residing within the Lubeck Public Service District, and the aforesaid persons are hereby appointed as members of the public service board of said district and their respective terms of office shall be as follows:

David T. Gorrell for a term of six years from the first day of the month in which this resolution and order is adopted;

Paul F. Somerville for a term of four years from the first day of the month in which this resolution and order is adopted; and,

Stafford J. McQuillin for a term of two years from the first day of the month in which this resolution and order is adopted.

Section 2. The aforesaid persons shall meet as soon as practicable, at the office of the Clerk of said County Court and shall qualify by taking an oath of office, and thereafter said appointees constituting the initial public service board of the Lubeck Public Service District shall meet and organize in compliance with the provisions of Article 13A of Chapter 16 of the West Virginia Code.

ADOPTED BY THE COUNTY COURT JAN. 30, 1958.

s/ Harry C. Nicely
President

Attest:

L. C. White
Clerk

STATE OF WEST VIRGINIA)

ss

County of Wood

I, L. C. White, hereby certify that I am the duly qualified and acting Clerk of the County Court of Wood County, West Virginia, and that the foregoing constitutes a true, complete and correct transcript of the proceedings of said County Court as had under date of Jan. 30, 1958, and resolutions and orders then adopted relating to the creation of Lubeck Public Service District, and appointment of members to the public service board of said district.

IN WITNESS WHEREOF, I have hereunto affixed my official signature and seal of said Court at Parkersburg, West Virginia, this 30 January, 1958.

(SEAL)

s/ L. C. White
County Court Clerk

And there appearing no further business to claim the attention of this Court, it is, hereby ordered that this Court do now adjourn to meet in regular session on Saturday, the 1st day of February, 1958, at 9:30 o'clock A. M.

Harry C. Nicely
President

STATE OF WEST VIRGINIA,
COUNTY OF WOOD, TO-WIT:

I, H. K. Smith, Clerk of the County Commission in and for the County of Wood and State of West Virginia, having a Seal, and the Officer in whose custody the files, books and records of said Office are required by laws of said State to be kept, do hereby certify that the attached and foregoing writing is a full, true and complete transcript and copy of Order Dated January 30, 195
IN RE: Lubeck Public Service District

as the same appears of record in my said Office in Order Book 28, Page 149

IN WITNESS WHEREOF, I have hereunto set my hand and the Seal of said Office, at the City of Parkersburg, County of Wood and State of West Virginia, this the 24th day of April, 1986

H. K. SMITH

CLERK WOOD COUNTY COMMISSION

By: Martha J. DeLoe
Deputy

Officials of Lubeck Public Service District were present at the meeting of the Commission and again discussed with the Commission the need for public water service in a substantial area of Wood County roughly described as the Lost Pavement, Missouri Run, Hope Hill, Homewood Road, Woodyard Creek Road areas, collectively referred to as the additional area. The Commission, having been previously contacted by residents of the area and having made certain investigations into the need for safe, potable and dependable water in the additional area and having been advised that Lubeck Public Service District is commencing an expansion of its water facilities and can provide expanded water service, has determined that there is an urgent need for public water service in said additional area, that Lubeck Public Service District is able to provide that service, and that the district should be enlarged to include this additional area.

The Commission, on its own motion, does hereby propose that Lubeck Public Service District be enlarged to include the Lost Pavement, Missouri Run, Hope Hill, Homewood Road, Woodyard Creek Road areas, more particularly described as follows:

BEGINNING at a point in the present southerly boundary of Lubeck Public Service District having a latitude of N. $39^{\circ} 12' 43''$ and having a longitude of W. $81^{\circ} 40' 55''$; thence in a southeasterly direction approximately 2.3 miles to a point having a latitude of N. $39^{\circ} 11' 13''$ and having a longitude of W. $81^{\circ} 39' 07''$; thence in an easterly direction approximately 4.6 miles to a point having a latitude of N. $39^{\circ} 11' 13''$ and having a longitude of W. $81^{\circ} 33' 07''$; thence in a northerly direction approximately 2.5 miles to a point having a

latitude of N. 39° 13' 25" and having a longitude of W. 81° 33' 07"; thence in a northwesterly direction approximately 2.15 miles to a point in the present boundary of Lubeck Public Service District having a latitude of N. 39° 14' 24" and a longitude of W. 81° 35'; thence with the present boundary line of Lubeck Public Service District the following three courses: W. approximately 1.73 miles to a point having a latitude of N. 39° 14' 24" and a longitude of W. 81° 36' 58"; thence southwest approximately 2.9 miles to a point having a latitude of N. 39° 12' 43" and a longitude of W. 81° 38' 58"; thence W. approximately 1.80 miles to the place of beginning.

It is ordered that a public hearing to consider the enlargement of Lubeck Public Service District to include the aforesaid area be held in the Judicial Annex Building of Wood County in the City of Parkersburg, West Virginia, on the 7th day of July, 1988, at 7:00 o'clock P. M., that notice of said hearing be published in The Parkersburg News as a Class I legal advertisement not less than 10 days before the date of the hearing and that notices be posted in at least five conspicuous places in said additional area not less than 10 days before the date of the hearing.

Entered this 16th day of June, 1988.


Commissioner


Commissioner


Commissioner

JULY 11, 1988

7/11/88
51/72

IN THE COUNTY COMMISSION OF WOOD COUNTY, WEST VIRGINIA

IN RE: THE COUNTY COMMISSION OF WOOD COUNTY APPROVED THE
ENLARGEMENT OF THE LUBECK PUBLIC SERVICE DISTRICT.

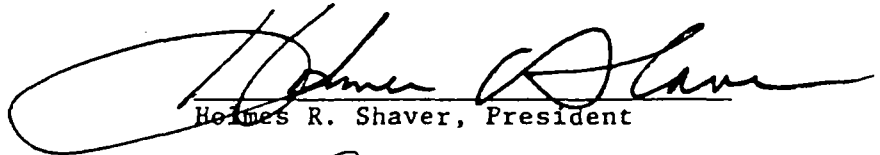
O R D E R

The County Commission of Wood County, on this date, approved the enlargement of the Lubeck Public Service District upon a motion made by Lewis E. Guinn, seconded by Steven A. Grimm and made unanimous by Holmes R. Shaver. This action is pursuant to the Public Hearing held on Thursday, July 7, 1988, at 7:00 P.M. after being duly advertised in accordance with Article 13-A, Chapter 16 of the West Virginia Code.


Attached to this Order is a Resolution and affidavits of notice and posting within the area to be annexed, and should be made a part thereof.

Approved:

COUNTY COMMISSION OF WOOD COUNTY


Holmes R. Shaver, President


Lewis E. Guinn, Commissioner


Steven A. Grimm, Commissioner

7/11/88
51/72

A RESOLUTION AND ORDER ENLARGING
LUBECK PUBLIC SERVICE DISTRICT IN WOOD COUNTY, WEST VIRGINIA

WHEREAS, the Wood County Commission did heretofore by order entered on June 16, 1988, fix the 7th day of July, 1988, as a date for a public hearing on the enlargement of Lubeck Public Service District, and notice of said hearing was published and posted as required by Article 13-A, Chapter 16 of the West Virginia Code, and in said notice it was provided that all persons residing in, or owning, or having any interest in property in the areas proposed to be included might appear at the time and place of said meeting and be heard for and against said enlargement, and

WHEREAS, the Wood County Commission proceeded to hold said public hearing on the 7th day of July, 1988, at 7:00 o'clock P. M., at which hearing in excess of 175 persons were present, and the Commission receiving neither written protest nor oral protest to said enlargement, and all of the persons present unanimously favoring said enlargement,

NOW THEREFORE BE IT RESOLVED AND ORDERED that the affidavit of The Parkersburg News of the publication of the notice of public hearing, together with the affidavit of James M. Cox as to the posting within the areas to be included within Lubeck Public Service District, be and the same are hereby filed.

BE IT FURTHER RESOLVED AND ORDERED that it is necessary, feasible and proper to enlarge Lubeck Public Service

District to include areas commonly known as Lost Pavement, Missouri Run, Hope Hill, Homewood Road, and Woodyard Creek Road areas, located in Wood County, West Virginia, to provide public water service to those areas, which areas are collectively described as follows:

BEGINNING at a point in the present southerly boundary of Lubeck Public Service District having a latitude of N. $39^{\circ} 12' 43''$ and having a longitude of W. $81^{\circ} 40' 55''$; thence in a southeasterly direction approximately 2.3 miles to a point having a latitude of N. $39^{\circ} 11' 13''$ and having a longitude of W. $81^{\circ} 39' 07''$; thence in an easterly direction approximately 4.6 miles to a point having a latitude of N. $39^{\circ} 11' 13''$ and having a longitude of W. $81^{\circ} 33' 07''$; thence in a northerly direction approximately 2.5 miles to a point having a latitude of N. $39^{\circ} 13' 25''$ and having a longitude of W. $81^{\circ} 33' 07''$; thence in a northwesterly direction approximately 2.15 miles to a point in the present boundary of Lubeck Public Service District having a latitude of N. $39^{\circ} 14' 24''$ and a longitude of W. $81^{\circ} 35'$; thence with the present boundary line of Lubeck Public Service District the following three courses: W. approximately 1.73 miles to a point having a latitude of N. $39^{\circ} 14' 24''$ and a longitude of W. $81^{\circ} 36' 58''$; thence southwest approximately 2.9 miles to a point having a latitude of N. $39^{\circ} 12' 43''$ and a longitude of W. $81^{\circ} 38' 58''$; thence W. approximately 1.80 miles to the place of beginning.

IT IS FURTHER ORDERED that from and after the date of the entry of this Order said additional area shall be a part of Lubeck Public Service District.

The Wood County Commission does further find and ORDER that the enlargement, maintenance, operation, improvement and extension of public service properties by said Public Service

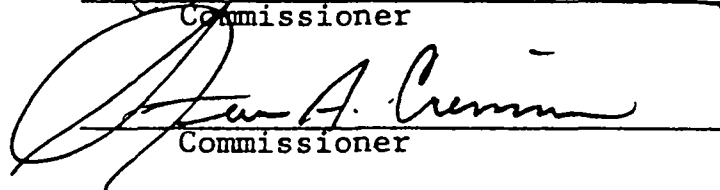
District will be conducive to the preservation of public health, comfort and convenience of such areas.

BE IT FURTHER ORDERED that within ten (10) days after the entry of this Order a certified copy thereof be filed for review and approval with the Public Service Commission of West Virginia as required by Article 13-A, Chapter 16, of the West Virginia Code.

Entered this 11th day of July, 1988.


Commissioner


Commissioner

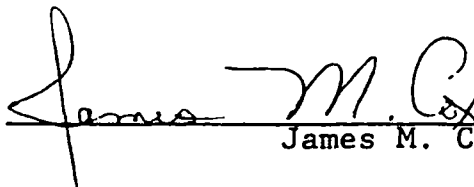

Commissioner

STATE OF WEST VIRGINIA,
COUNTY OF WOOD, TO-WIT:

I, James M. Cox, Manager of Lubeck Public Service District, upon my oath say that on June 25TH, 1988, I caused to be posted copies of the attached notice in six conspicuous places throughout the area to be annexed, commonly known as Lost Pavement, Missouri Run, Hope Hill, Homewood Road, Woodyard Creek Road areas, located in Wood County, West Virginia, at the following locations:

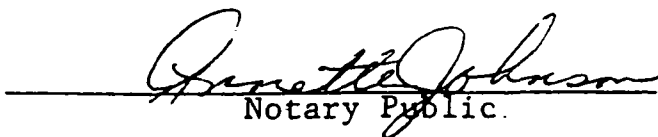
1. ~0.8 MILE ON HOMEWOOD RD. FROM LUBECK = LARRY BROTHERS' PROPERTY
2. ~0.25 MILE ON LOST PAVEMENT RD. FROM ROUTE 32 OR GINER RD.
3. ~0.6 MILE ON HOPE HILL RD. FROM ROUTE 32 OR GINER RD. = M^CHARRY PROPERTY.
4. ~INTERSECTION OF ROUTES 21/19 & 13/10.
5. AT THE OLD WILLIAMS SCHOOL ON ROUTE 38.
6. ~INTERSECTION OF ROUTES 13 & 9/8.

Dated this 25TH day of June, 1988.


James M. Cox

Taken, subscribed and sworn to before the undersigned authority this 26TH day of June, 1988.

My commission expires: 10-8-91


Notary Public.

NOTICE OF PUBLIC HEARING
TO ENLARGE LUBECK PUBLIC SERVICE
DISTRICT TO INCLUDE THE LOST
PAVEMENT, MISSOURI RUN, HOPE HILL,
HOMWOOD ROAD AND WOODYARD CREEK
ROAD AREAS

Notice is given that the Wood County Commission has fixed the 7th day of July, 1988, at 7:00 o'clock P. M. at the Judicial Annex Building of Wood County in the City of Parkersburg, West Virginia, as the time and place for a public hearing to consider the enlargement of Lubeck Public Service District to include the areas commonly known as Lost Pavement, Missouri Run, Hope Hill, Homewood Road, Woodyard Creek Road areas, located in Wood County, West Virginia, to provide public water service to those areas, which areas are collectively described as follows:

BEGINNING at a point in the present southerly boundary of Lubeck Public Service District having a latitude of N. 39° 12' 43" and having a longitude of W. 81° 40' 55"; thence in a southeasterly direction approximately 2.3 miles to a point having a latitude of N. 39° 11' 13" and having a longitude of W. 81° 39' 07"; thence in an easterly direction approximately 4.6 miles to a point having a latitude of N. 39° 11' 13" and having a longitude of W. 81° 33' 07"; thence in a northerly direction approximately 2.5 miles to a point having a latitude of N. 39° 13' 25" and having a longitude of W. 81° 33' 07"; thence in a northwesterly direction approximately 2.15 miles to a point in the present boundary of Lubeck Public Service District having a latitude of N. 39° 14' 24" and a longitude of W. 81° 35"; thence with the present boundary line of Lubeck Public Service District the following three courses: W. approximately 1.73 miles to a point having a latitude of N. 39° 14' 24" and a longitude of W. 81° 36' 58"; thence southwest approximately 2.9 miles to a point having a latitude of N. 39° 12' 43" and a longitude of W. 81° 38' 58"; thence W. approximately 1.80 miles to the place of beginning.

All persons residing in, or owning, or having any interest in property in said areas may appear at the aforesaid time and place and be heard for and against said enlargement.

Jamie Six, Clerk
Wood County Commission

June 24

MARCIA MOORE

being first duly sworn, says that the

notice of public hearing----7th day of

JULY

hereto attached was printed in the Parkersburg News

a daily newspaper published in the City of Parkersburg, Wood County, West Virginia, and posted one at the front door of the Court House for

successive weeks, the first publication ~~and posting~~ thereon being on the 24th day of JUNE, 1988, and subse-

quent publication on the day of , 19 , the day of , 19 , the day of , 19 , the day of , 19 .

Printer's Fee \$ 27.13

434 words @ .0625

Marcia Moore

Subscribed and sworn to before me this 24th day of

JUNE, 1988.

[Signature]
Notary Public for Wood County, West Virginia

My commission expires 7-21-92

NOTICE OF PUBLIC HEARING
TO ENLARGE LUBECK PUBLIC SERVICE DISTRICT
TO INCLUDE THE LOST PAVEMENT, MISSOURI RUN,
HOPE HILL, HOMEWOOD ROAD AND WOODYARD CREEK ROAD AREAS

Notice is given that the Wood County Commission has fixed the 7th day of July, 1988, at 7:00 o'clock P. M. at the Judicial Annex Building of Wood County in the City of Parkersburg, West Virginia, as the time and place for a public hearing to consider the enlargement of Lubeck Public Service District to include the areas commonly known as Lost Pavement, Missouri Run, Hope Hill, Homewood Road, Woodyard Creek Road areas, located in Wood County, West Virginia, to provide public water service to those areas, which areas are collectively described as follows:

BEGINNING at a point in the present southerly boundary of Lubeck Public Service District having a latitude of N. 39° 12' 43" and having a longitude of W. 81° 40' 55"; thence in a southeasterly direction approximately 2.3 miles to a point having a latitude of N. 39° 11' 13" and having a longitude of W. 81° 39' 07"; thence in an easterly direction approximately 4.6 miles to a point having a latitude of N. 39° 11' 13" and having a longitude of W. 81° 33' 07"; thence in a northerly direction approximately 2.5 miles to a point having a latitude of N. 39° 13' 25" and having a longitude of W. 81° 33' 07"; thence in a northwesterly direction approximately 2.15 miles to a point in the present boundary of Lubeck Public Service District having a latitude of N. 39° 14' 24" and a longitude of W. 81° 35'; thence with the present boundary line of Lubeck Public Service District the following three courses: W. approximately 1.73 miles to a point having a latitude of N. 39° 14' 24" and a longitude of W. 81° 36' 58"; thence southwest approximately 2.9 miles to a point having a latitude of N. 39° 12' 43" and a longitude of W. 81° 38' 58"; thence W. approximately 1.80 miles to the place of beginning.

All persons residing in, or owning, or having any interest in property in said areas may appear at the aforesaid time and place and be heard for and against said enlargement.

Jamie Six, Clerk
Wood County Commission

STATE OF WEST VIRGINIA,
COUNTY OF WOOD, TO-WIT:

I, JAMIE SIX, Clerk of the County Commission in and for the County of Wood and State of West Virginia, having a Seal, and the Officer in whose custody the files, books and records of said Office are required by laws of said State to be kept, do hereby certify that the attached and foregoing writing is a full, true and complete transcript and copy of _____

IN RE: THE COUNTY COMMISSION OF WOOD COUNTY APPROVED THE ENLARGEMENT OF THE LUBECK PUBLIC
SERVICE DISTRICT

as the same appears of record in my said Office in COURT ORDER BOOK NO. 51, Page 72

IN WITNESS WHEREOF, I have hereunto set my hand and the Seal of said Office, at the City of Parkersburg, County of Wood and State of West Virginia, this the 6th day of February, 1990

JAMIE SIX

CLERK WOOD COUNTY COMMISSION,

By: Pauline Eaton
Deputy

ORIGINAL

ENTERED

O.B. 88-6 Page

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

FINAL

10-25-88

Entered: October 5, 1988

CASE NO. 88-404-W-PC

WOOD COUNTY COMMISSION,
Parkersburg, Wood County.

Petition for permission to enlarge boundaries
of Lubeck Public Service District.

RECOMMENDED DECISION

On June 16, 1988, the Wood County Commission adopted an order to enlarge the boundaries of Lubeck Public Service District to include areas commonly known as Lost Pavement, Missouri Run, Hope Hill, Homewood Road, and Woodyard Creek Road, all of which are located in Wood County. The purpose of this expansion of the Lubeck Public Service District boundaries was to ultimately provide water service to those areas as a part of a future project to be undertaken by that District.

In accordance with the provisions of West Virginia Code §16-13A-2, the order of the Wood County Commission was submitted for the Commission's consideration and approval. In accordance with the provisions of that statute, the Public Service Commission is required to conduct a public hearing in the affected County prior to entering a decision which either approves, modifies or disapproves the proposed Public Service District boundary modifications.

By Order entered on August 3, 1988, hearings in these matters were scheduled to commence in the Judge's Chambers, City Building, 2nd and Avery Streets, Parkersburg, West Virginia, on Tuesday, September 13, 1988, beginning at 10:00 a.m., EDT. The purpose of this hearing was to receive public testimony and to receive additional evidence to determine if the order of the Wood County Commission is in the public interest.

The August 3, 1988 Order required the Wood County Commission to publish a copy of the Commission's Order once in a newspaper, duly qualified by the Secretary of State, published and of general circulation in Wood County. On August 30, 1988, the Wood County Commission submitted an affidavit of publication verifying that the required public notice was provided by publication on August 19, 1988 in The Parkersburg News, a newspaper published and of general circulation in Wood County.

The hearing commenced as scheduled. The Wood County Commission and the Lubeck Public Service District were represented by Lawrence M. Ronning, and the Commission's Staff was represented by Ann Rodak of the Legal Division.

DISCUSSION

The hearing was well attended by members of the public. The 53 persons in attendance signed a sheet which noted their attendance and indicated whether they were in protest or in support of the proposed boundary expansion. All persons in attendance indicated that they supported the project, except two persons who did not indicate whether they either supported or protested the described boundary expansion.

The Lubeck Public Service District and the Wood County Commission first made statements on the record describing the rationale behind the proposed boundary expansion. Staff then went on record to voice its support for the proposed boundary expansion. Thereafter, members of the public were provided the opportunity to appear and make statements on the record either in support of or against the proposed boundary expansion.

James Cox, the District Manager for Lubeck Public Service District, generally described the territories covered by the proposed boundary expansion and the District's plans for providing water service to those territories. As shown on the map identified as Exhibit 1, the territories in question lie beyond the municipal boundaries of the City of Parkersburg, and they are not currently within the boundaries of any public service district. Both Lubeck Public Service District and Mineral Wells Public Service District have facilities and territories which are directly adjacent to the territories included in the proposed expansion. (Tr., pp. 10-12; Lubeck Exhibit No. 1).

The residents in these territories do not currently have access to a public water supply, and many must transport bottled water or take other measures to meet their water supply needs. These customers have repeatedly approached the City of Parkersburg, Mineral Wells Public Service District and Lubeck Public Service District in an effort to obtain public water to these territories, but to date they have been unable to secure public water from any of the adjacent public utilities. (Tr., pp. 29-35).

As described by Mr. Cox, Lubeck Public Service District is currently unable to extend its facilities by ordinary extensions to serve these territories, and it must upgrade its facilities and add a new treatment plant to be able to serve these customers. These residents have petitioned Lubeck Public Service District for water service, and Lubeck is in the process of performing engineering feasibility studies to determine how water service can best be extended to these territories. (Tr., pp. 6-10).

The Public Service Commission previously approved an engineering contract for the performance of feasibility studies to evaluate the growth and expansion of the Lubeck Public Service District to serve these territories. (Case No. 88-042-W-PC).

Based upon its initial evaluation, Lubeck Public Service District believes that it can extend service throughout these territories as part of a project to upgrade its system and add a new treatment plant to serve its existing facilities as well as the new territories. The District hopes to secure available grant money and low interest loans to finance

the construction of this contemplated project. It is ultimately hoped that service can be extended to these customers to provide quality service at reasonable rates. If everything goes according to schedule, Lubeck Public Service District hopes to submit a proposed project for the Commission's review and consideration as early as 1989. The Mid-Ohio Valley Regional Council and the Wood County Commission have evaluated the ability of both Lubeck Public Service District and Mineral Wells Public Service District to serve these territories, and they have concluded that the plan proposed by Lubeck Public Service District provides the most reasonable alternative for providing much needed water service to these territories. (Tr., pp. 11, 14-15).

Robert L. Skiles, Chief Utilities Manager for the Public Service District Division of the Public Service Commission, testified that Staff had reviewed the proposed boundary expansion and is in support of the enlargement of Lubeck Public Service District's boundaries. During its initial review of the filing, Staff was of the opinion that the proposed boundary expansion should be approved unless Mineral Wells Public Service District provided evidence that it could provide water service to the proposed area of expansion in a more feasible manner than the Lubeck Public Service District. Since Mineral Wells Public Service District had neither submitted a plan for Staff consideration nor appeared at the hearing in opposition to the expansion, Staff believed that it was best for the District to proceed with the expansion of its boundaries and the development of an acceptable project to serve the territory. The Staff believed that the District was taking reasonable measures to evaluate available alternatives for serving the territory, and the approval of the proposed boundary expansion was seen as the first step in providing safe, adequate and reasonably priced water service to these territories. (Tr., pp. 19-22).

Public statements in support of the proposed boundary expansion and the future development of the public water system in these territories were provided by Dale Sole, James E. Smith, David Van Kirk and Betty Bower. All of these customers related the residents' longstanding desire to obtain public water service to meet the needs of the territory, and the approval of the boundary expansion was seen as the first significant step towards securing adequate water service. The residents have been trying to obtain appropriate water service to this territory for over 15 years, and the residents had wide spread support for the development of water service to these territories by Lubeck Public Service District. (Tr., pp. 28-35).

Upon review of all of the above, the Administrative Law Judge is of the opinion that the July 7, 1988 Order of the Wood County Commission to enlarge the boundaries of Lubeck Public Service District is reasonable and appropriate and is consistent with the public interest. Therefore, the proposed boundary expansion shall be approved by this order. The proposed enlargement of the Lubeck Public Service District boundaries to include the territories of Lost Pavement, Missouri Run, Hope Hill, Homewood Road and Woodyard Creek Road appears to represent the initial step in securing a much needed public water supply to serve these territories.

While the residents of these areas are eager to get water service in this territory as soon as possible, the Administrative Law Judge notes that the Commission's approval of the described enlargement to Lubeck Public Service District's boundaries shall in no way constitute prior approval of any proposed project to serve these territories which is subsequently submitted by Lubeck Public Service District. When submitted, such a project would be reviewed on its own merits to insure that the described service and facilities were properly designed, the project is supported by adequate financing, rates and charges, and the project is consistent with the public interest.

Even though a specific project has yet to be submitted and reviewed, it is reasonable to grant the proposed boundary expansion at this time so that an acceptable project can be developed by Lubeck Public Service District as soon as possible to satisfy the public needs throughout these territories. If, for some reason, the contemplated project does not proceed to construction in a timely manner, and the approved expansion of Lubeck Public Service District's boundaries proves to be a hindrance to the development of alternate public water supplies to serve these territories, the Wood County Commission and the Public Service Commission would have to take appropriate steps to subsequently modify Lubeck Public Service District's boundaries as necessary to promote the development of alternate water projects.

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

1. The Wood County Commission's order proposes to expand the boundaries of Lubeck Public Service District to include certain unincorporated territories adjacent to Lubeck Public Service District which currently have no source of water supply. (July 3, 1988 Application and attachments).

2. Lubeck Public Service District is in the process of evaluating a proposed project to include the expansion of service into these designated territories in conjunction with a project to expand the District's capacity and upgrade its facilities to meet the needs of existing and future customers. Lubeck Public Service District intends to seek available funding and file for a certificate of convenience and necessity from the Commission for such a project as soon as possible, hopefully as early as 1989. (Tr., pp. 11, 14-15).

3. Based upon preliminary estimates, it is anticipated that Lubeck Public Service District can provide quality water service at reasonable rates to these areas, and an appropriate project can be submitted for the Commission's review and approval. (Tr., pp. 11, 14-15).

4. Mineral Wells Public Service District, which is another water utility which serves adjacent territories, has not submitted an alternate proposal for serving the territory in question, and it did not appear in opposition to the proposed expansion of boundaries by Lubeck Public Service District. (Tr., pp. 10-12).

5. The general public in the affected territories supports the expansion of Lubeck Public Service District's boundaries. (Tr., pp. 28-35).

6. The Staff of the Public Service Commission supported the proposed boundary expansion, and believed the District was taking reasonable measures to evaluate available alternatives for serving the territory. (Tr., pp. 19-22).

CONCLUSION OF LAW

Upon consideration of all of the above, the Administrative Law Judge is of the opinion that the July 7, 1988 Order of the Wood County Commission to enlarge the boundaries of Lubeck Public Service District is reasonable and appropriate and consistent with the public interest. This approval shall in no manner constitute any prior approval for any project which is subsequently designed to serve these territories, and such a project, when developed, must be submitted to the Commission and reviewed on its own merits.

ORDER

IT IS, THEREFORE, ORDERED that the July 7, 1988 Order of the Wood County Commission to enlarge the boundaries of Lubeck Public Service District to include the territories of Lost Pavement, Missouri Run, Hope Hill, Homewood Road, and Woodyard Creek Road, is hereby approved. Any project which is subsequently developed to serve this territory shall be submitted to the Commission for review and approval on its own merits.

The Executive Secretary is hereby ordered to serve a copy of this order upon the Commission by hand delivery, and upon all parties of record by United States Certified Mail, return receipt requested.

Leave is hereby granted to the parties to file written exceptions supported by a brief with the Executive Secretary of the Commission within fifteen (15) days of the date this order is mailed. If exceptions are filed, the parties filing exceptions shall certify to the Executive Secretary that all parties of record have been served said exceptions.

If no exceptions are so filed this order shall become the order of the Commission, without further action or order, five (5) days following the expiration of the aforesaid fifteen (15) day time period, unless it is ordered stayed or postponed by the Commission.

Any party may request waiver of the right to file exceptions to an Administrative Law Judge's Order by filing an appropriate petition in writing with the Secretary. No such waiver will be effective until approved by order of the Commission, nor shall any such waiver operate to make any Administrative Law Judge's Order or Decision the order of the

Commission sooner than five (5) days after approval of such waiver by the Commission.

Robert F. Williams

Robert F. Williams
Administrative Law Judge

RFW:jas

ORDERS-Wood County Commission, West Virginia

JANUARY

Term,

MONDAY, MARCH 17, 1997
TWENTY-SIXTH Day

MARCH 19 97

CAUTION: THIS DOCUMENT IS A PUBLIC RECORD 2630-55

IN RE: ENLARGEMENT AND RE-ADJUSTMENT OF THE BOUNDARIES OF LUBECK PUBLIC SERVICE DISTRICT.

O R D E R

This 17th day of March, 1997, came Lubeck Public Service District and filed with the Clerk of the County Commission of Wood County, West Virginia, its Petition to enlarge and re-adjust the boundaries of said District; and the said Clerk presented such Petition to said County Commission at its regular meeting on this date, which Petition is ordered filed.

The County Commission, having considered the Petition and the testimony of witnesses in support thereof, finds that the facts contained in the Petition are true and that it is necessary, feasible and proper to enlarge the District to include the additional area of 53.9 square miles and to exclude 0.63 square mile to be included in the Mineral Wells District Territory; and the County Commission proposes inclusion of 53.9 square miles and exclusion of 0.63 square miles and does fix the 10th day of April, 1997, at 10:00 o'clock, A. M., at the office of the Wood County Commission in the Courthouse at Third and Market Streets, Parkersburg, West Virginia, as the time and place for a hearing on said Petition and proposal. Notice shall be published and posted as required by law.

(SEE PHOTOSTAT BOOK 44N, PAGE 77, FOR
COPY OF PETITION, EXHIBIT A AND MAP
IN ITS ENTIRETY)

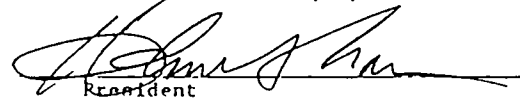
ENTER:

COUNTY COMMISSION OF WOOD COUNTY

BY: s/ Holmes R. Shaver

Its: President

There appearing no further business to claim the attention of this Commission, it is hereby ordered that this Commission, do now adjourn to meet in Regular Session, Thursday, March 20, 1997, at 9:00 o'clock A. M. and meeting in Special Session, Wednesday, March 19, 1997, at 9:00 o'clock A. M., in regard to the preparation of the Budget for Fiscal Year 1997/1998.



President

JANUARY TERM

WEDNESDAY, MARCH 19, 1997
TWENTY-SEVENTH DAY

MARCH 1997

At a Special Session of the County Commission, continued and held for the County of Wood, at the Courthouse thereof, Wednesday, March 19, 1997, Present, Holmes R. Shaver, President of said Commission, and David A. Couch and Robert K. Tebay, Commissioners.

STATE OF WEST VIRGINIA,
COUNTY OF WOOD, TO-WIT:

I, JAMIE SIX, Clerk of the County Commission in and for the County of Wood and State of West Virginia, having a Seal, and the Officer in whose custody the files, books and records of said Office are required by laws of said State to be kept, do hereby certify that the attached and foregoing writing is a full, true and complete transcript and copy of IN RE: ENLARGEMENT AND RE-ADJUSTMENT
OF THE BOUNDARIES OF LUBECK PUBLIC SERVICE DISTRICT

as the same appears of record in my said Office in COURT ORDER BOOK 60, Page 80

IN WITNESS WHEREOF, I have hereunto set my hand and the Seal of said Office, at the City of Parkersburg, County of Wood and State of West Virginia, this the 20th day of MARCH, 19 97

JAMIE SIX

CLERK WOOD COUNTY COMMISSION

By:

Brenda Lambert

Deputy

✓ IN RE: A RESOLUTION AND ORDER ENLARGING AND RE-ADJUSTING THE BOUNDARIES OF LUBECK PUBLIC SERVICE DISTRICT
IN WOOD COUNTY, WEST VIRGINIA

WHEREAS, the Wood County Commission did heretofore by order entered on March 17, 1997, fix the 10th day of April, 1997, as a date for a public hearing on the enlargement and re-adjustment of the boundaries of Lubeck Public Service District, and notice of said hearing was published and posted as required by Article 13-A, Chapter 16 of the West Virginia Code, and in said notice it was provided that the meeting is open to the public and

WHEREAS, the Wood County Commission proceeded to hold said public hearing on the 10th day of April, 1997, at 10:00 o'clock A.M., at which hearing the Commission receiving neither written protest nor oral protest to said enlargement or boundary re-adjustment, and all persons present favoring said enlargement and re-adjustment

NOW THEREFORE BE IT RESOLVED AND ORDERED that the affidavits of The Parkersburg News and Parkersburg Sentinel of the publication of the notice of public hearing, together with the affidavits of John Kirk as to the posting within the area to be included within Lubeck Public Service District and the area to be excluded, be and the same are hereby filed.

BE IT FURTHER RESOLVED AND ORDERED that it will be conducive to the preservation of public health, comfort and convenience of the area to be included, that Lubeck Public Service District can adequately serve said area and that said enlargement is feasible and proper to provide services to the following described area:

BEGINNING at the Ohio River near the head of Newberry Island at a point having a Latitude of N. 39° 13' 16" and a Longitude of W. 81° 41' 22"; thence along the existing southerly boundary of the Lubeck Public Service District, S. 32° 28' E. 3,958 feet to a point having a Latitude of N. 39° 12' 43" and a Longitude of W. 81° 39' 07"; thence east 22,583 feet to a point in the westerly line of the Mineral Wells Public Service District having a Latitude of N. 39° 11' 13" and a Longitude of W. 81° 34' 20"; thence with the boundary of the Mineral Wells Public Service District, S. 36° 44' W. 53,680 feet to a point in the Wood/Jackson County line having a Latitude of N. 39° 04' 08" and a Longitude of W. 81° 41' 08"; thence with the said County line, N. 61° 01' W. 19,016 feet to a point at the confluence of Pond Creek and the Ohio River having a Latitude of N. 39° 05' 39" and a Longitude of W. 81° 44' 39"; thence with the meanders of the Ohio River approximately 10.8 miles to the place of beginning, containing 53.90 square miles (34,500 acres).

IT IS FURTHER RESOLVED AND ORDERED that Lubeck Public Service District cannot adequately serve the following area, that it can be adequately served by Mineral Wells Public Service District, and that said area be excluded from Lubeck Public Service District's service area, which area to be excluded is described as follows;

BEGINNING at a point in the easterly boundary the Lubeck Public Service District having a Latitude of N. 39° 12' 21" and Longitude of W. 81° 33' 15"; thence along the existing boundary of the Lubeck Public Service District, W. 6,880 feet to a point having a Latitude of N. 39° 11' 13" and a Longitude of W. 81° 33' 15"; thence W. 5,134 feet to a point having a Latitude of N. 39° 11' 13" and a Longitude of West 81° 34' 20"; thence N. 36° 44' E. 8,585 feet to the place of beginning, containing 0.63 square miles (405.44 acres).

IT IS FURTHER ORDERED that from and after the date of the entry of this Order said additional area of 52.9 square miles (34,500 acres) shall be a part of Lubeck Public Service District, and that the 0.63 square mile (405.44 acres) shall be excluded from Lubeck Public Service District's service area.

BE IT FURTHER ORDERED that within ten (10) days after the entry of this Order a certified copy thereof be filed for review and approval with the Public Service Commission of West Virginia as required by Article 13-A, Chapter 16, of the West Virginia Code.

ENTERED this 10th day of April, 1997.

s/ Holmes R. Shaver
Holmes R. Shaver, Commissioner President
s/ Robert K. Tebay
Robert K. Tebay, Commissioner
David A. Couch, Commissioner, Absent

Order Book 60

Page 92

ENTERED
O.R. 97P Page

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

FINAL

9-22-97

Entered: September 2, 1997

CASE NO. 97-0297-PSWD-PC

WOOD COUNTY COMMISSION

Petition for consent and approval
for enlargement of the boundaries of
the Mineral Wells Public Service District.

CASE NO. 97-0483-PSWD-PC

WOOD COUNTY COMMISSION

Petition for consent and approval to
enlarge and readjust the boundaries
of Lubeck Public Service District.

RECOMMENDED DECISION

Case No. 97-0297-PSWD-PC

On March 19, 1997, the Wood County Commission filed a petition seeking Commission approval for the enlargement of the boundaries of the Mineral Wells Public Service District. Such enlargement would incorporate areas in Steele, Slate and Tygart Magisterial Districts of Wood County.

Case No. 97-0483-PSWD-PC

On April 25, 1997, the Wood County Commission filed a petition seeking Commission approval to enlarge and readjust the boundaries of the Lubeck Public Service District.

By Order dated June 6, 1997, Case Nos. 97-0483-PSWD-PC and 97-0297-PSWD-PC were consolidated and referred to the Division of Administrative Law Judges for a decision to be rendered on or before October 15, 1997.

In Final Joint Memoranda filed in these cases on May 22 and June 3, 1997, Staff Attorney J. Joseph Watkins, Esquire, indicated that, in both cases, Staff recommended approval of the Wood County Commission's petitions and that the matters be set for hearing as required by West Virginia Code §16-13A-2.

By Order dated July 16, 1997, these matters were set for hearing to be held in the Court Room, Second Floor, City-County Complex, Parkersburg, West Virginia, on August 13, 1997. Said order also required that the Wood County Commission give notice of the date, time and place of the hearing by publishing a Notice of Hearing once in a newspaper, duly qualified by the

Secretary of State, published and of general circulation in Wood County. The hearing was held as scheduled. The Wood County Commission appeared by its counsel Ellen Madeglio, Esquire. The Lubeck Public Service District appeared by its counsel Lawrence Ronning, Esquire. Commission Staff was represented by Staff Attorney J. Joseph Watkins.

No one appeared at the hearing in protest after proper publication had been made, as evidenced by the affidavit of publication dated August 4, 1997, which was filed with the Commission on August 11, 1997.

FINDINGS OF FACT

1. In Case No. 97-0297-PSWD-PC, on March 19, 1997, the Wood County Commission filed a petition seeking Commission approval for the enlargement of the boundaries of the Mineral Wells Public Service District. (See, petition).

2. In Case No. 97-0483-PSWD-PC, on April 25, 1997, the Wood County Commission filed a petition seeking Commission approval to enlarge and readjust the boundaries of Lubeck Public Service District. (See, petition).

3. In a Final Joint Staff Memorandum filed in these cases on May 22 and June 3, 1997, Staff Attorney J. Joseph Watkins advised that, in both cases, Staff recommended approval of the Wood County Commission's petitions. (See, Final Joint Staff Memorandum filed May 22, 1997 and June 3, 1997).

4. By Order dated July 16, 1997, these matters were set for hearing to be held in the Court Room, Second Floor, City-County Complex, Parkersburg, West Virginia, on August 13, 1997. Said Order also required that the Wood County Commission give notice of the hearing by publishing a Notice of Hearing once in a newspaper, duly qualified by the Secretary of State, published and of general circulation in Wood County. (See, Order dated July 16, 1997).

5. The Wood County Commission published the Notice of Hearing in Wood County in accordance with the Commission's requirements. (See, affidavit of publication filed August 11, 1997).

6. At the hearing held in these cases on August 13, 1997, no one appeared in protest to the orders of the Wood County Commission. (See, Tr., p. 5).

CONCLUSION OF LAW

The Administrative Law Judge is of the opinion and finds that, since the Wood County Commission gave proper notice of the hearing to be held in these cases, and no one appeared in protest to the petitions at the hearing held on August 13, 1997, the orders of the Wood County Commission in these cases can be approved as unprotested.

ORDER

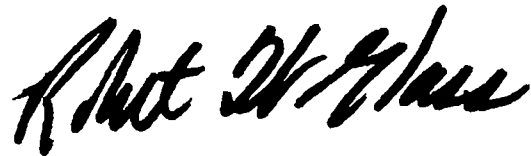
IT IS, THEREFORE, ORDERED that the order of the Wood County Commission dated April 10, 1997, filed in Case Nos. 97-0297-PSWD-PC and 97-0483-PSWD-PC, adjusting the boundaries of Mineral Wells Public Service District and Lubeck Public Service District, be, and the same hereby is, approved.

The Executive Secretary is hereby ordered to serve a copy of this order upon the Commission by hand delivery, and upon all parties of record by United States Certified Mail, return receipt requested.

Leave is hereby granted to the parties to file written exceptions supported by a brief with the Executive Secretary of the Commission within fifteen (15) days of the date this order is mailed. If exceptions are filed, the parties filing exceptions shall certify to the Executive Secretary that all parties of record have been served said exceptions.

If no exceptions are so filed this order shall become the order of the Commission, without further action or order, five (5) days following the expiration of the aforesaid fifteen (15) day time period, unless it is ordered stayed or postponed by the Commission.

Any party may request waiver of the right to file exceptions to an Administrative Law Judge's Order by filing an appropriate petition in writing with the Secretary. No such waiver will be effective until approved by order of the Commission, nor shall any such waiver operate to make any Administrative Law Judge's Order or Decision the order of the Commission sooner than five (5) days after approval of such waiver by the Commission.



Robert W. Glass
Administrative Law Judge

RWG:pst

JANUARY 29, 2004

IN THE COUNTY COMMISSION OF WOOD COUNTY, WEST VIRGINIA

IN RE: THE COUNTY COMMISSION APPOINTED PAUL W.
SMITH TO THE LUBECK PUBLIC SERVICE DISTRICT
BOARD.

ORDER

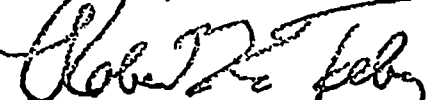
On this date, and pursuant to an Order appearing in Order Book 51, at Page 433 and bearing the date of April 1, 1991, dealing with the procedure policy for appointments to Boards and Authorities, the County Commission of Wood County, upon a motion made by Robert K. Tebay, seconded by K.D. Merritt and made unanimous by Rick Modesitt, appointed Paul W. Smith to fill a vacancy on the Lubeck Public Service District Board. Mr. Smith's term will expire December 31, 2009.

APPROVED:

THE COUNTY COMMISSION OF WOOD COUNTY


Rick Modesitt, President


K.D. Merritt, Commissioner


Robert K. Tebay, Commissioner

A/218

COPY

file
COPY

MARCH 18, 2004

IN THE COUNTY COMMISSION OF WOOD COUNTY, WEST VIRGINIA

IN RE: THE COUNTY COMMISSION APPOINTED ROGER DALE MARTIN
TO THE LUBECK PUBLIC SERVICE DISTRICT.ORDER

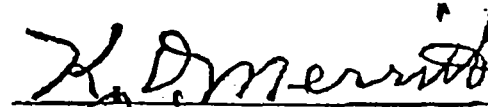
On this date, the County Commission of Wood County, upon a motion made by Robert K. Tebay, seconded by K.D. Merritt and made unanimous by Robert K. Tebay, appointed Roger Dale Martin to the Lubeck Public Service District. Said appointment is pursuant to an Order appearing in Order Book 51, at Page 433 and bearing the date of April 1, 1991, dealing with the procedure policy for appointments to Board and Authorities. Mr. Martin's term will expire December 31, 2007.

APPROVED:

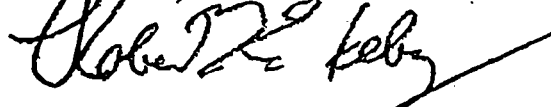
THE COUNTY COMMISSION OF WOOD COUNTY



Rick Modesitt, President



K.D. Merritt, Commissioner



Robert K. Tebay, Commissioner

*Lubeck
P/S*

COPY

JUNE 30, 2005



IN THE COUNTY COMMISSION OF WOOD COUNTY, WEST VIRGINIA

IN RE: THE COUNTY COMMISSION APPOINTED JERRY R. MARTIN
TO FILL THE UNEXPIRED TERM OF LEE "OX" JOHNSON ON
THE LUBECK PUBLIC SERVICE DISTRICT BOARD. HIS
TERM WILL EXPIRE DECEMBER 31, 2005.

ORDER

On this date, and pursuant to an Order appearing in Order Book 51, at Page 433 and bearing the date of April 1, 1991, dealing with the procedure policy for appointments being made by the County Commission of Wood County, the County Commission, upon a motion made by Gary D. Deem, seconded by Rick Modesitt and made unanimous by Robert K. Tebay, appointed Jerry R. Martin to fill the unexpired term of Lee "Ox" Johnson, who passed away, on the Lubeck Public Service District Board. Mr. Martin's term will expire December 31, 2005.

APPROVED:

THE COUNTY COMMISSION OF WOOD COUNTY

Rick Modesitt
Rick Modesitt, President

Robert K. Tebay
Robert K. Tebay, Commissioner

Gary D. Deem
Gary D. Deem, Commissioner

Book 66
Page 155

ORDERS-Wood County Commission, West Virginia

THURSDAY, JANUARY 29, 2004

JANUARY Term,

SEVENTH Day

JANUARY Year 2004

IN RE: PAUL W. SMITH—OATH OF OFFICE—LUBECK PUBLIC SERVICE DISTRICT.

STATE OF WEST VIRGINIA,
COUNTY OF WOOD, TO-WIT:

I, PAUL W. SMITH, do solemnly swear that I will support the Constitution of the United States, the Constitution of West Virginia, and that I will faithfully and impartially discharge the duties of the office of LUBECK PUBLIC SERVICE DISTRICT, in and for Wood County, West Virginia, to the best of my skill and judgment, during my continuance in the same; SO HELP ME GOD.

s/Paul W. Smith

Subscribed and sworn to, before the County Commission of Wood County, West Virginia, this 29th day of January, 2004.

Jamie Six,

Clerk Wood County Commission

By: Cara Atkinson, Deputy

K. H. McEntee, Commissioner

Book 66

208

ORDERS-Wood County Commission, West Virginia

JANUARY Term,

TUESDAY, MARCH 16, 2004
TWENTY FIFTH Day

MARCH Year 2004

CAPTS & MARTIN, INC., SPENCER, WV RE-ORDER NO. 18848-03

IN RE: ROGER DALE MARTIN—OATH OF OFFICE—LUBECK PUBLIC SERVICE DISTRICT.

STATE OF WEST VIRGINIA,
COUNTY OF WOOD, TO-WIT:

I, ROGER DALE MARTIN, do solemnly swear that I will support the Constitution of the United States, the Constitution of West Virginia, and that I will faithfully and impartially discharge the duties of the office of LUBECK PUBLIC SERVICE DISTRICT, in and for

Wood County, West Virginia, to the best of my skill and judgment, during my continuance in the same; SO HELP ME GOD.

s/Roger Dale Martin

Subscribed and sworn to, before the County Commission of Wood County, West Virginia, this 18th day of March, 2004.

Jamie Six,

Clerk Wood County Commission

By: Brenda Blondin, Deputy

FROM : PROBATE

FAX NO. : 3044241897

Aug. 24 2005 09:49AM P1

IN RE: JERRY R. MARTIN—OATH OF OFFICE—MEMBER LUBECK PUBLIC SERVICE DISTRICT BOARD.
STATE OF WEST VIRGINIA,
COUNTY OF WOOD, TO-WIT:

I, JERRY R. MARTIN do solemnly swear that I will support the Constitution of the United States, the Constitution of West Virginia, and that I will faithfully and impartially discharge the duties of the office of MEMBER LUBECK PUBLIC SERVICE DISTRICT BOARD, in and for Wood County, West Virginia, to the best of my skill and judgment, during my continuance in the same; SO HELP ME GOD.

s/Jerry R. Martin

Subscribed and sworn to, before the County Commission of Wood County, West Virginia, this 7th day of July, 2005

Jamie Six,

Clerk Wood County Commission

By: Brenda Blondin, Deputy

RULES OF PROCEDURE

1.5

LUBECK PUBLIC SERVICE DISTRICT

ARTICLE I

NAME AND PLACE OF BUSINESS

Section 1. The name of this Public Service District shall be LUBECK PUBLIC SERVICE DISTRICT (the "District").

Section 2. The principal office of the District will be located in Washington, West Virginia.

Section 3. The official seal of the District shall consist of 2 concentric circles between which circles shall be inscribed Lubeck Public Service District, and in the center "seal" as follows:

Section 4. The fiscal year of the District shall begin on the 1st day of July in each year and shall end on June 30 of the following year.

ARTICLE II

PURPOSE

Section 1. The District is organized and operated exclusively for the purposes set forth in Chapter 16, Article 13A of the Code of West Virginia, 1931, as amended (the "Act").

ARTICLE III

MEMBERSHIP

Section 1. The members of the Public Service Board of the District (the "Board") shall be those persons appointed by The County Commission of Wood County, West Virginia (the "County Commission"), or otherwise appointed pursuant to the Act, who shall serve for such terms as may be specified in the order of the County Commission or otherwise.

Section 2. Should any member of the Board resign or otherwise become legally disqualified to serve as a member of the Board, the District shall immediately notify the County Commission or other entity provided under the Act and request the appointment of a qualified person to fill such vacancy. Prior to the end of the term of any member of the Board, the District shall notify the County Commission or other entity provided under the Act of the pending termination and request the County Commission or other entity provided under the Act to enter an order of appointment or re-appointment to maintain a fully qualified membership of the Board.

Section 3. The District shall provide to the Public Service Commission of West Virginia, within 30 days of the appointment, the following information: the new board member's name, home address, home and office phone numbers, date of appointment, length of term, who the new member replaces and if the new appointee has previously served on the board, and such other information required under the Act.

Section 4. Each board member shall, within 6 months of taking office, successfully complete the training program established and administered by the Public Service Commission of West Virginia in conjunction with the West Virginia Department of Environmental Protection and the West Virginia Bureau for Public Health.

Section 5. Board members shall not be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service, or in furnishing any supplies or materials to the District, nor shall a former board member be hired by the District in any capacity within a minimum of 12 months after such board member's term has expired or after such board member has resigned from the Board.

Section 6. Salaries of the board members shall be established as provided in Chapter 16, Article 13A, Section 4 of the Act. The District shall certify the number of customers served to the Public Service Commission of West Virginia on the first day of July each year. Board members may be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties.

Section 7. The members of the Board are not personally liable or responsible for any obligations of the District or the Board but are answerable only for willful misconduct in the performance of their duties.

ARTICLE IV

MEETINGS OF THE BOARD

Section 1. The members of the Board shall hold regular monthly meetings on such days of each month and at such place and hour as the members shall determine from time to time. If the day stated shall fall on a legal holiday, the meeting shall be held on the following day. Special meetings of the Board may be called at any time by the Chairperson or by a quorum of the Board.

Section 2. At any meeting of the Board, a majority of the members of the Board shall constitute a quorum. Each member of the Board shall have one vote at any meeting and if a quorum is not present, those present may adjourn the meeting to a later date.

Section 3. Unless otherwise waived, notice to members of regular meetings shall be by letter or telephone. Unless otherwise waived, notice to members of each special meeting shall be by letter or telephone not less than 72 hours before the date fixed for such special meeting. The notice of any special meeting shall state briefly the purposes of such meeting and the nature of the business to be transacted at such meeting, and no business other than that stated in the notice shall be transacted at such special meeting.

Section 4. Pursuant to Chapter 6, Article 9A, Section 3 of the Code of West Virginia, 1931, as amended, notice of the date, time, place and agenda of all regularly scheduled meetings of the Board, and the date, time, place and purpose of all special meetings of the Board, shall be made available, in advance, to the public and news media as follows:

Rule No. 1. Notice of Regularly Scheduled Meetings. Immediately after adoption of these Rules of Procedure and in January of each year thereafter, the Board shall instruct the Secretary to, and the Secretary shall, post, and leave posted throughout the year to which it applies, at the regular meeting place of the Board and at the Wood County Courthouse, where notices customarily are posted, a notice setting forth the date, time and place of the Board's regularly scheduled meetings for the ensuing year. In addition, a copy of the agenda for each regularly scheduled meeting shall also be posted at the same location by the Secretary not less than 72 hours before such regular meeting is to be held.

The Board shall also instruct the Secretary to, and the Secretary shall, distribute to each of the newspapers and other news media listed below a notice identical to that posted:

<u>News Media</u>	<u>Fax Number</u>
The Parkersburg News and The Parkersburg Sentinel	(304) 485-5122
WXIL	(304) 424-6955
WNUS	(304) 295-4389
WTAP	(304) 422-3920

A notice shall be considered distributed to a news medium when it has been faxed to such news medium at the fax number listed above. In January of each year after the adoption of these Rules of Procedure, the Board shall review the above list and shall amend such list as needed, in the opinion of the Board, to reflect properly all the newspapers and other news media that customarily cover news of the area served by the Board. In addition, a copy of the agenda for each regularly scheduled meeting shall also be distributed to the news media by the Secretary not less than 72 hours before such regular meeting is to be held.

In the event of any modification to the date, time, place or agenda of a regularly scheduled meeting of the Board, notice of such modification shall immediately be given to the public and news media by posting at the places and distributing to the news media in the manner set forth above not less than 48 hours before such regular meeting is to be held. A copy of the notice of such modification shall be attached to and made a part of the minutes of the meeting for which such notice was given.

Rule No. 2. Notice of Special Meetings. Not less than 72 hours prior to the date set for any special meeting of the Board, the Board shall instruct the Secretary to, and the Secretary shall, post at the regular meeting place of the Board and at the Wood County Courthouse, where notices customarily are posted, a notice setting forth the date, time, place and purpose or purposes of such special meeting. Business at such special meeting shall be limited to the purpose or purposes specified in said notice.

As soon as practical after the posting of said notice, but not less than 72 hours prior to the date set for such special meeting, the Secretary shall distribute to each of the newspapers and other news media listed in Rule No. 1 hereof, a notice identical to that posted. Amendments made to such news media list, as provided for in said Rule No. 1, shall be incorporated by reference in this Rule No. 2. A notice shall be considered distributed to a news medium when it has been addressed to such news medium at the address listed in said Rule No. 1, or at such other address as the news medium has in writing requested be used, marked or stamped with first class postage and deposited in the United States mail.

A copy of such notice posted and distributed pursuant to this Rule No. 2 shall be attached to and made a part of the minutes of the meeting for which such notice was given.

Rule No. 3. Emergency Meetings. The Board may hold a meeting without providing the notice to the public and news media required by Rule No. 1 and Rule No. 2 hereof only in the event of an emergency requiring immediate official action. The existence for such an emergency requiring immediate official action shall be determined by the Board and shall be attested to in a certificate by the Secretary describing such emergency and setting forth the reason or reasons immediate official action is required, which certificate shall be attached to and made a part of the minutes of such emergency meeting.

Rule No. 4. Executive Sessions. The Board may hold an executive session during a regular, special or emergency meeting in accordance with Chapter 6, Article 9A, Section 4 of the Code of West Virginia, 1931, as amended. During the open portion of the meeting, prior to convening an executive session, the Chairperson shall identify the authorization under Chapter 6, Article 9A, Section 4 of the Code of West Virginia, 1931, as amended, for holding the executive session and present it to the Board and to the general public, but no decision may be made in the executive session. An executive session may be held only upon a majority affirmative vote of the Board members present. The Board may hold an executive session and exclude the public only when a closed session is required for any of the actions permitted under Chapter 6, Article 9A, Section 4 of the Code of West Virginia, 1931, as amended.

Rule No. 5. Minutes. The Board shall provide for the preparation of written minutes of all of its meetings. Subject to the exceptions set forth in Chapter 6, Article 9A, Section 4 of the Code of West Virginia, 1931, as amended, minutes of all meetings except minutes of executive sessions, if any are taken, shall be available to the public within a reasonable time after the meeting and shall include, at least, the following information:

- (1) The date, time and place of the meeting;
- (2) The name of each Board member present and absent;
- (3) All motions, proposals, resolutions, orders, ordinances and measures proposed, the name of the person proposing the same and their disposition; and
- (4) The results of all votes and, upon the request of a Board member, the vote of each Board member, by name.

Rule No. 6. No Actions by Reference. Except as otherwise expressly provided by law, the Board may not deliberate, vote, or otherwise take official action upon any matter by reference to a letter, number or other designation or other secret device or method, which may render it difficult for persons attending a meeting to understand what is being deliberated,

voted or acted upon. However, this rule does not prohibit the Board from deliberating, voting or otherwise taking action by reference to an agenda, if copies of the agenda, sufficiently worded to enable the public to understand what is being deliberated, voted or acted upon, are available for public inspection at the meeting. The Board may not vote by secret or written ballot.

Rule No. 7. Broadcasting of Meetings. Except as otherwise provided in this rule, any radio or television station is entitled to broadcast all or any part of a Board meeting required to be open. The Board may regulate the placement and use of equipment necessary for broadcasting, photographing, filming or recording a meeting, so as to prevent undue interference with the meeting. The Board shall allow the equipment to be placed within the meeting room in such a way as to permit its intended use, and the ordinary use of the equipment may not be declared to constitute undue interference; provided, that if the Board, in good faith, determines that the size of the meeting room is such that all the members of the public present and the equipment and personnel necessary for broadcasting, photographing, filming and tape-recording the meeting cannot be accommodated in the meeting room without unduly interfering with the meeting and an adequate alternative meeting room is not readily available, then the Board, acting in good faith and consistent with the purposes of this rule, may require the pooling of the equipment and the personnel operating it.

Rule No. 8. Telephonic Meetings. Board meetings may be held by telephone conference or other electronic means. All Board members participating by telephone or other electronic means must be audible to all those personally present.

Section 5. All meetings of any committee of the Board shall be subject to the Rules of Procedure set forth in Section 4 above.

ARTICLE V

OFFICERS

Section 1. The officers of the Board shall be a Chairperson, Secretary and Treasurer. The Chairperson shall be elected from the members of the Board. The Secretary and Treasurer need not be members of the Board.

Section 2. The officers of the Board shall be elected each year by the members at the first meeting after the first day of January of each year. The officers so elected shall serve until the next annual election by the membership and until their successors are duly elected and qualified. Any vacancy occurring among the officers shall be filled by the members of the Board at a regular or special meeting. Persons selected to fill vacancies shall

serve until the next annual organizational meeting of the Board when their successors shall be elected as hereinabove provided.

ARTICLE VI

DUTIES OF OFFICERS

Section 1. When present, the Chairperson shall preside as Chairperson at all meetings of the Board. The Chairperson shall, together with the Secretary, sign the minutes of all meetings at which the Chairperson shall preside. The Chairperson shall attend generally to the executive business of the Board and exercise such powers as may be conferred upon the Chairperson by the Board, by these Rules of Procedure, or prescribed by law. The Chairperson shall execute, and if necessary, acknowledge for record, any deeds, deeds of trust, contracts, notes, bonds, agreements, or other documents necessary, requisite, proper or convenient to be executed by or on behalf of the Board when and if directed by the members of the Board.

Section 2. If the Chairperson is absent from any meeting, the remaining members of the Board shall select a temporary chairperson.

Section 3. The Secretary shall keep a record of all proceedings of the Board which shall be available for inspection as other public records. Duplicate records shall be filed with the County Commission and shall include the minutes of all Board meetings. The Secretary shall, together with the Chairperson, sign the minutes of the meetings at which the Secretary is present. The Secretary shall have charge of the minute book, be the custodian of deeds and other documents and papers of the Board. The Secretary shall also perform such other duties as may be required of the Secretary by law or as may be conferred upon the Secretary from time to time by the members of the Board.

Section 4. The Treasurer shall be the lawful custodian of all funds of the District and shall pay same out on orders authorized or approved by the Board. The Treasurer shall keep or cause to be kept proper and accurate books of accounts and proper receipts and vouchers for all disbursements made by or through the Treasurer and shall prepare and submit such reports and statements of the financial condition of the Board as the members may from time to time prescribe. The Treasurer shall keep and preserve all financial records of the District for 10 years and shall at all times have such records readily available for public inspection. At the end of the Treasurer's term of office, the Treasurer shall promptly deliver all financial records of the District to his successor in office. The Treasurer shall also perform such other duties as may be required of the Treasurer by law or as may be conferred

upon the Treasurer from time to time by the members of the Board. The Treasurer shall furnish bond in an amount to be fixed by the Board for the use and benefit of the District.

Section 5. No money may be paid out by the District except upon an order signed by the Chairperson and Secretary, or such other person or persons authorized by the Chairperson or the Secretary, as the case may be, to sign such orders on their behalf. Each order for the payment of money shall specify the purposes for which the amount thereof is to be paid, with sufficient clearness to indicate the purpose for which the order is issued, and there shall be endorsed thereon the name of the particular fund out of which it is payable and it shall be payable from the fund constituted for such purpose, and no other. All such orders shall be reflected in the minutes of the next meeting of the Board.

Section 6. The members and officers of the Board shall make available to the County Commission, at all times, all of its books and records pertaining to the District's operation, finances and affairs, for inspection and audit.

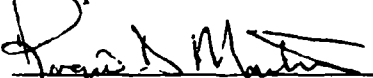
ARTICLE VII

AMENDMENTS TO RULES OF PROCEDURE

Section 1. These Rules of Procedure may be altered, changed, amended or added to at any regular or special meeting of the Board when a quorum is present and a majority of those present vote for the alteration, change, amendment or addition; but no such alteration, change, amendment or addition shall be made at any special meeting unless notice of the intention to propose such alteration, change, amendment or addition and a clear statement of the substance thereof be included in the written notice calling such special meeting.

Adopted this 26th day of May, 2005.


Chairperson and Member


Member

Member

CERTIFICATION

Certified a true copy of the Rules of Procedure duly adopted by the
Board of Lubeck Public Service District on May 26, 2005.

Dated this 17th day of June, 2005.

[SEAL]


Secretary

05/20/05
101090/00308

LUBECK PUBLIC SERVICE DISTRICT

January 13, 2005
7:00 P.M.

Lee Johnson, Chairman
Paul W. Smith, Treasurer
Roger D. Martin Secretary

Attending: Lee Johnson, Roger Martin, Paul Smith, Phil Postlewait, Richard Hayhurst,
Jim Cox, Charles R. Flinn, Mike Wright, Bill Argabrite, Dewey & Ann Queen,
Judy Boston, Virginia Sines, Marvin Bradley, and Jerry Martin.

NO. OF CUSTOMERS:	Section	Sewer	Water
	1 Lake Washington Road	311	493
	2 Lubeck	333	422
	3 Riverhill - Blenn. Heights	280	365
	4 DuPont Road	287	292
	5 Larkmead Road	109	345
	6 LMH - Homewood Road	0	281
	7 Washington Bottom	301	368
	8 New England Ridge	178	317
	9 Lubeck South	207	322
	10 Larkmead Area - Marrtown	53	323
	11 Route 68 South - Hopewell	0	218
	12 Mitchell's	50	69
	Total Customers	2109	3,815

TREASURER'S REPORT:

Revenue Fund - Wesbanco	\$48,827.84
Operations & Maintenance Fund - Wesbanco	\$3,437.28
RUS Construction Account	\$419.05
Series 1999 Sewerage Bonds Account	\$0.00
WesBanco Trust Fund	\$224,414.34
Transfer From Revenue to Operation & Maintenance Checking Account	\$102,000.00
Transfer From Revenue to Operation & Maintenance Checking Account	\$9,000.00
Transfer From Revenue to Wesbanco Investment	\$5,621.48
Transfer From Revenue to Operation & Maintenance Checking Account	\$5,000.00
Transfer From Revenue to Operation & Maintenance Checking Account	\$82,000.00
The following transfers were made to cover payroll since the last Board meeting:	
Transfer From Revenue to Operation & Maintenance Checking	\$5,600.00
Transfer From Revenue to WesBanco Tax Account	\$1,715.03
Transfer From Revenue to Operation & Maintenance Checking	\$13,400.00
Transfer From Revenue to WesBanco Tax Account	\$5,162.65
Transfer From Revenue to Operation & Maintenance Checking	\$13,800.00

BUSINESS: Prayer by Paul Smith.

FIRST ORDER OF BUSINESS:

- ✓ A) Election of officers: Moved by Paul Smith, seconded by Roger Martin that the officers for 2005 remain the same as 2004 and be as follows: Lee Johnson - Chairman, Paul Smith - Treasurer, and Roger Martin - Secretary. Passed unanimously.
- B) Moved by Roger Martin, seconded by Paul Smith that the minutes of the Board meeting of December 9, 2004 and the Special Meeting of December 22, 2004 be approved. Passed unanimously.

DISCUSSION OF DISTRICT HAPPENINGS:

It was reported what the field has been doing in the District:

- A) Installed 2 water tap since the last Board meeting. There are 2 water taps to be installed. This gives us 65 water taps for 2004. The District has installed 0 sewer taps since the last Board meeting. There are 2 sewer taps to be installed. This gives us 12 sewer taps for 2004.
- B) Working maintenance of hydrants.
- C) Replaced hydrant that had been taken out by a car on Lake Washington Road.
- D) Working on restoring yards.
- E) Replaced manhole that was installed incorrectly.
- F) Repaired electrical conduit that gas company contractor hit beside Whitman's.
- G) Did Turn offs and turn ons.
- H) Completed work orders, spotted lines, set meters.

It was reported what Bill and Rod have been working on:

December Water Pumped to System:	24,788,000 Gallons
Homewood Booster Station:	202,000 Gallons
New England Booster Station:	2,141,500 Gallons
High Water Usage and Day:	951,000 on 12/25
Low Water Usage and Day:	690,000 on 12/03

Experienced no overflows.

GENERAL BUSINESS:

- A) Moved by Roger Martin, seconded by Paul Smith that all bills be approved as reviewed by management and the Board, in addition to all fund transfers as presented. Passed unanimously.
- B) The November 2004 financial statement will be deferred to the next Board meeting.
- C) The District has received information from the Parkersburg Utility Board concerning water and sewer service to any thing from duplexes to multiple units that brings up a good question about the services to these units based upon Public Service Commission rules for water and how they are now interpreting the sewer rules for these situations. Please read the enclosed information so we can discuss it at the next meeting. Jim made mention of the fact that Lee and he had talked about the article in the newspaper about the impact of sewer rates in Vienna with the work that Parkersburg is going to have to complete. It was stated that this was why the District did not want to be tied into the Parkersburg system.
- D) In that Reynolds Company is still here with their equipment, Jim requests that the District have them rehabilitate a second water well at a cost of \$6,800. This is a savings of \$700 over having to go out and hire them when they are not in the area working as we saw from their first price. Moved by Roger Martin, seconded by Paul Smith that the District modify the contract with Reynolds for rehabilitation of Well C at a cost of \$6,800 since they are still in the area and thus saving the District \$700 over the initial well rehabilitation of Well D. Passed unanimously.
- E) Moved by Roger Martin, seconded by Paul Smith that the February 10, 2005 meeting date be changed due to Jim being out of town on this date. It is to be moved to February 11, 2005 at 7 PM. Passed unanimously.
- F) Jim reported that he had scheduled a meeting with the County Commission on December 16 and it had been canceled. Jim had again scheduled a meeting for December 23, 2004 and it was again canceled by the county commission. I asked the Board what direction they wanted me to take. Jim was instructed to get another meeting scheduled with the County Commission.
- G) Mr. Flinn was here to talk about water up his road. Mr. Flinn asked about the possibility of the District putting in the water line and then billing each of the people along the road. Jim is to talk to Chris Waldron and get back to Mr. Flinn about whether the people along the road would cooperate with this idea which would require a lien on their property until the cost was paid off.

H) Roger asked we knew anything about the proposed sewer bond situation. Jim told him that the District would need to attend a working meeting on January 28 and then the Infrastructure Council meeting on February 2. It would be at the full Council meeting that they would rule on it.

I) Lee asked whether the Public Service Commission had set up a hearing date on the District's inter company borrowing of funds. No, the District has yet to hear of a hearing date.

J) Virginia Sines asked how the water wells might be affected by the lowering of the Ohio River water level while they try and remove the barges from the dam. Jim told her that the District anticipated a small influence based upon past studies but that we really wouldn't know the full impact until it happens.

K) Meeting Adjourned.

Lee Johnson APPROVED L. J. Johnson ATTESTED

LUBECK PUBLIC SERVICE DISTRICT

April 14, 2005

7:00 P.M.

Lee Johnson, Chairman
Paul W. Smith, Treasurer
Roger D. Martin Secretary

Attending: Paul Smith, Roger Martin, Jim Cox, Phil Postlewait, Richard Hayhurst, Dewey & Ann Queen, Mike Wright, Bill Argabrite, Virginia Sines, Judy Boston, John Kirk, Craig Richards-Burgess & Niple and Don Putnam-Greentree Applied Systems(software).

NO. OF CUSTOMERS:	Section		Sewer	Water
	1 Lake Washington Road		315	499
	2 Lubeck		339	428
	3 Riverhill - Blenn. Heights		276	367
	4 DuPont Road		287	293
	5 Larkmead Road		110	344
	6 LMH - Homewood Road		0	280
	7 Washington Bottom		305	374
	8 New England Ridge		177	317
	9 Lubeck South		207	320
	10 Larkmead Area - Marrtown		54	327
	11 Route 68 South - Hopewell		0	218
	12 Mitchell's		53	71
	Total Customers		2123	3,838

TREASURER'S REPORT:

Revenue Fund - Wesbanco	\$42,815.15
Operations & Maintenance Fund - Wesbanco	\$4,408.45
RUS Construction Account	\$419.05
Series 1999 Sewerage Bonds Account	\$0.00
WesBanco Trust Fund	\$263,960.00
Transfer From Revenue to Operation & Maintenance Checking Account	\$62,500.00
Transfer From Revenue to Operation & Maintenance Checking Account (Held)	\$0.00
Transfer From Revenue to Wesbanco Investment	\$2,500.00
Transfer From Revenue to Wesbanco Investment	\$0.00
Transfer From Revenue to Operation & Maintenance Checking Account	\$0.00
The following transfers were made to cover payroll since the last Board meeting:	
Transfer From Revenue to Operation & Maintenance Checking	\$13,600.00
Transfer From Revenue to WesBanco Tax Account	\$5,045.70
Transfer From Revenue to Operation & Maintenance Checking	\$13,500.00
Transfer From Revenue to WesBanco Tax Account	\$5,034.85
Transfer From Revenue to Operation & Maintenance Checking	\$0.00

BUSINESS: Prayer by Paul Smith.

- ✓ A) The District needs to appoint an Acting Chairman until Lee can rejoin the meetings. As has been the practice in the past, the longest serving member is appointed the Acting Chairman. This would be Paul Smith.
- B) Moved by Roger Martin, seconded by Paul Smith that the minutes of the Board meeting of March 24, 2005 be approved. Passed unanimously.

DISCUSSION OF DISTRICT HAPPENINGS:

It was reported what has been happening in the District:

- A) Installed 2 water taps since the last Board meeting. There is 1 water tap to be installed. This gives us 7 water taps for 2005 calendar year. The District has installed 0 sewer taps since the last Board meeting. There is 1 sewer tap to be installed. This gives us 1 sewer tap for 2005.
- B) Began repairing yards from leaks and taps.
- C) Did turn off and turn ons for the month.
- D) Repaired the water line leak at GE and 2 leaks on Ridgeway.
- E) Completed laying water line across Smitherman Road.
- F) Completed work orders, spotted lines, set meters, etc.

It was reported what Bill and Rod have been working on:

A) March Water Pumped to System:	24,992,000 Gallons
Homewood Booster Station:	217,000 Gallons
New England Booster Station:	2,210,500 Gallons
High Water Usage and Day:	982,000 on 03/14
Low Water Usage and Day:	669,000 on 03/09

GENERAL BUSINESS:

- A) Moved by Roger Martin, seconded by Paul Smith that all bills be approved as reviewed by management and the Board, in addition to all fund transfers as presented. Passed unanimously.

B) The District opened bids on April 7, 2005 for the water system improvements. The total costs exceeded the amount of money available for the contracts by \$472,000. The District has been working on ideas to get the project moving forward. The District has asked the Rural Utilities Services to loan us an additional \$472,000 to make up the difference. This money would be borrowed at a rate of not more than 4.625% for 40 years. However, if the District is able to close the loan before June 22, 2005 the District can take advantage of a loan rate of 4.25 % versus 4.625%. Phil and Jim have talked to the RUS and they have agreed to loan us the additional money. We need to give them three pieces of paper work:

The bid tabulation sheet

Engineers recommendation for bid awards

District's recommendation of bid awards

This will need to be passed through the Public Service Commission for their blessing but it needs to be stated that this increase **will not** affect our post construction rates at all.

The awards would be:

Contract 03-1	Everett L. Harper & Son, Inc.	\$1,109,369.50
Contract 03-2	Mid-Atlantic Storage Systems, Inc.	\$ 439,500.00
Contract 03-3	Mid-Atlantic Storage Systems, Inc.	\$1,047,900.00
Contract 03-4	Geiger Brothers, Inc.	\$ 407,600.00
Contract 03-5	Moody's of Dayton	\$ 157,450.00

Change Orders totaling no more than \$65,000 for programming work, etc. at the water treatment plant.

Richard Hayhurst has looked at the bid information and agrees with the awarding of the bids and change orders to these contractors.

Moved by Roger Martin, seconded by Paul Smith that the District award the contracts as outlined above contingent upon the approvals of the Rural Utilities Service and the Public Service Commission. Passed unanimously.

C) Greentree Applied Systems was here to present the District with their information concerning changing of our billing software to their company.

D) Moved by Roger Martin, seconded by Paul Smith that the District change our Sick Leave Policy to comply with the attached policy. Policy to take effect December 15, 2005. Passed unanimously.

- E) The District has received the results of the round of C-8 testing that was collected on January 21, 2005. The results show a large reduction in all but one wells. In the one well the level basically doubled.
- F) The District has been looking at replacing our meter reader truck. The District has obtained pricing from the State of West Virginia's Purchasing Department and then we have gone out to a couple local dealers to get pricing on a 4 wheel drive Jeep Liberty. The following are the results:

Stephen Auto Center	\$15,828.00
Wharton Auto	\$22,809.00
Pioneer Jeep	Have not received a price

The amount of trade is estimated to be about \$3,100, leaving a difference of \$12,728. Moved by Paul Smith, seconded by Roger Martin that the District purchase the Jeep Liberty from Stephens Auto group for a cost not to exceed \$12,728 provided Pioneer Jeep does not give the District a better price than Stephens. Passed unanimously.

- G) Mr. Flinn's grandson was here to make sure the District is aware that he still wants water. He was asking if we had heard anything from the Public Service Commission concerning our application for a special extension agreement. Richard Hayhurst stated that the case has been established but they have yet to set any target dates.
- H) Discussion ensued concerning the fact that Jim has a personal license plate on the front of his company vehicle and that there is no lettering on the vehicle that declares it to be a Lubeck PSD vehicle. Jim told the members of the audience that he would remove the plate from the front of the vehicle.
- I) Meeting Adjourned.

 APPROVED  ATTESTED

LUBECK PUBLIC SERVICE DISTRICT

July 14, 2005
7:00 P.M.

Paul W. Smith, Treasurer, Acting Chairman
Roger D. Martin, Secretary
Jerry R. Martin

Attending: Paul Smith, Roger Martin, Jerry Martin, Jim Cox, Rocky McConnell,
Charles R. Flinn, Gary Deem, Rick Modesitt, Ann & Dewey Queen, Gene Shaffer
Jeffrey Saulton, Marvin Bradley, Bill Argabrite, Judy Boston, and Virginia Sines.

NO. OF CUSTOMERS:	Section	Sewer	Water
	1 Lake Washington Road	317	504
	2 Lubeck	346	435
	3 Riverhill - Blenn. Heights	278	371
	4 DuPont Road	286	295
	5 Larkmead Road	106	341
	6 LMH - Homewood Road	0	283
	7 Washington Bottom	305	379
	8 New England Ridge	177	317
	9 Lubeck South	211	325
	10 Larkmead Area - Marttown	56	328
	11 Route 68 South - Hopewell	0	217
	12 Mitchell's	58	79
	Total Customers	2,140	3,872

TREASURER'S REPORT:

Revenue Fund - Wesbanco	\$86,676.63
Operations & Maintenance Fund - Wesbanco	\$4,663.80
RUS Construction Account	\$491.67
WDC Construction Account	\$482.65
WesBanco Trust Fund	\$298,134.25

Transfer From Revenue to Operation & Maintenance Checking Account	\$106,000.00
Transfer From Revenue to O & M Checking Account-UNITED BANK	\$1,000.00
Transfer From Revenue to Wesbanco Investment	\$0.00
Transfer From Revenue to Wesbanco Investment	\$0.00
Transfer From Revenue to Wesbanco Investment	\$0.00
Transfer From Revenue to Operation & Maintenance Checking Account (Held)	\$0.00

The following transfers were made to cover payroll since the last Board meeting:

Transfer From Revenue to Operation & Maintenance Checking	\$14,300.00
Transfer From Revenue to WesBanco Tax Account	\$5,596.52
Transfer From Revenue to Operation & Maintenance Checking	\$0.00
Transfer From Revenue to WesBanco Tax Account	\$0.00
Transfer From Revenue to Operation & Maintenance Checking	\$0.00

BUSINESS: Prayer by Paul Smith.

- ✓ A) Election of officers: Moved by Jerry Martin, seconded by Roger Martin that the officers for the remainder of 2005 be as follows: Roger Martin - Chairman, Paul Smith - Treasurer, and Jerry Martin - Secretary. It was agreed that Paul Smith would complete tonight's meeting as Acting Chairman. Passed unanimously.
- B) Moved by Roger Martin, seconded by Jerry martin that the minutes of the Board meeting of June 23, 2005 be approved. Passed unanimously.
- C) Paul welcomed our Wood County Commissioners that were in attendance and our newest member, Jerry Martin to the Board.

DISCUSSION OF DISTRICT HAPPENINGS:

It was reported what has been going in the District:

- A) Installed 0 water taps since the last Board meeting. There are 6 water taps to be installed. This gives us 22 water taps for 2005. Installed 0 sewer taps since the last Board meeting. The District has 1 sewer tap to install. Have installed 7 sewer taps for 2005.
- B) Connected the water line back where Bizzack had torn it out earlier.
- C) Working on connecting the water lines between Wakefield and Lubeck Hills and about to complete it.
- D) Did turn offs and turn ons.
- E) Repaired six (6) water services.
- F) Worked on yard repairs.
- G) Completed work orders, spotted lines, set meters.

It was reported what Bill and Rod have been working on:

A) June Water Pumped to System:	28,484,000 Gallons
Homewood Booster Station:	309,000 Gallons
New England Booster Station:	2,591,000 Gallons
High Water Usage and Day:	1,169,000 on 06/08
Low Water Usage and Day:	831,000 on 06/04

GENERAL BUSINESS:

- A) Moved by Roger Martin, seconded by Jerry Martin that all bills be approved as reviewed by management and the Board, in addition to all fund transfers as presented. Passed unanimously.
- B) Mr. Flinn was here to let us know how much he still wants water. Discussion was held concerning getting him water. Jerry Martin asked Jim to put in writing to Mr. Flinn what he had been told to this point and to give him a time schedule as to construction, etc. Jim asked that he not be directed to do this until he has received a project schedule from the engineer. It was agreed to wait. Discussion was held concerning what types of extra costs the District might see that would stop the District from providing water to Mr. Flinn. Jim stated that there could be rock encountered, bad foundation materials on a tank, etc.
- C) The District opened bids on July 5 at 12 noon for the supplying of new billing software. As it turned out we only had one bidder, in that Appalachian Software called stating that they appreciated their past experience with the District but stated that they would not be bidding. Therefore, the only bid we received was from Greentree Applied Systems, Inc. for \$18,000. Jerry Martin stated that he and Jim had talked extensively about the software situation and that he was in favor of the new programming and he felt pricing was in line. Moved by Jerry Martin, seconded by Roger Martin that the District move forward with the conversion to Greentree Software at a cost of \$18,000 with the first \$5,400 due at the signing of the agreement to convert. Passed unanimously.
- D) For information, the folks off of New England Ridge that were in for the last two or three meeting has come up with the money to pay for their extension and we are now working on getting the easements ready and upon their signing we will begin working on getting started bringing in material, etc. to do the water line extension. Gene Shaffer asked about the extension and whether it was similar to the self help project that they had accomplished years ago. Jim stated that it was with the exception that the District had agreed to install the line due to the cost of material. Jim stated that the Wood County Commission had committed \$4,000 toward the cost of this project and thanked them for their effort. Upon questioning, Jim stated that the line extension would more than likely start in early August.

- F) As in the past the District wishes to attend the West Virginia Rural Water Meetings at Canaan Valley this fall. It serves as a way for our people to attend sessions for credit toward the hours needed to maintain licenses in both the water and wastewater sides of the operation as well as to see some new products that are being displayed. As a member of Rural Water they have an annual meeting at this conference and they ask us to appoint a voting delegate. In the past it has been myself with an alternate of Bill Gibbs who is going to attend from the water plant. Moved by Roger Martin, seconded by Jerry Martin that the District appoint James Cox as the Voting Delegate to the Annual Meeting of the West Virginia Rural Water Association with Bill Gibbs serving as the alternate Delegate. Passed unanimously.
- G) Moved by Jerry Martin, seconded by Roger Martin that the District adopt the Resolution approving the invoices related to the water project and the payment thereof dated July 14, 2005 and totaling \$27,195.67. Passed unanimously.
- H) Jim reported that the Public Service Commission training for the Commissioners will be September 8 - 10 at Blackwater Falls.
- I) Moved by Jerry Martin, seconded by Roger Martin that the three (3) Board members sign the signature cards and resolutions as was approved at the last meeting for moving of the District's funds from Wesbanco to United. Passed unanimously.
- J) Mr. Agrabrite asked about the balance of money owed between the water and sewer departments. Jim stated that he believed that the money between the two had been paid off but would check to make sure and let him know. Upon checking, Jim found out that there was still a balance due of \$5,803.02. That will be paid off in July.
- J) Meeting adjourned.

 APPROVED  ATTESTED

050115com032105.wpd

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 21st day of March, 2005.

CASE NO. 05-0115-PSD-PC

LUBECK PUBLIC SERVICE DISTRICT

a public utility, Wood County.

Petition for consent and approval of the bond anticipation note (filed 2/3/05).

COMMISSION ORDER

On February 3, 2005, the Lubeck Public Service District (District) filed a petition for approval to restructure the Bond Anticipation Note which was previously approved.¹ In its petition, the District set forth the specific terms for the proposed restructuring and indicated that it would have no present impact on rates for the District's customers. The District stated the Bond Anticipation Note is due on March 1, 2006.

On February 7, 2005, the District filed a copy of its June 30, 2004 Annual Report, which had been inadvertently omitted from the original submission.

On February 9, 2005, a copy was filed of correspondence from the West Virginia Infrastructure and Jobs Development Council (WVIJDC) to the District. The WVIJDC approved the District's request to convert a portion of the Bond Anticipation Note to bonds and to reissue a smaller bond anticipation note as outlined on an attachment to the letter. As represented on WVIJDC's attachment, the total to be restructured is \$16,569,400, which consists of the \$16,549,400 remaining balance as of March 1, 2006 (maturity date) plus \$20,000 additional WVIJDC commitment.

¹See Case No. 98-0009-PSD-CN (August 11, 1998).

Commission Staff (Staff) filed an Initial and Final Joint Staff Memorandum on February 15, 2005. Staff explained that on August 11, 1998, the District was granted a certificate of convenience and necessity to construct 40 miles of sanitary sewer lines and to construct a new waste water treatment plant.² The \$26,500,000 total estimated project cost was to be funded through a \$7,950,000 State Revolving Fund loan (at 3% for 20 years), a \$2,000,000 WVJDC loan (at 0% for 40 years) and a \$16,550,000 WVJDC Bond Anticipation Note. The District's existing debt consists of the two loans totaling \$9,950,000. The District now asks to restructure the \$16,550,000 Bond Anticipation Note which will be broken down in three parts totaling \$16,569,400, as summarized by Staff as follows:

1. Bond # 1 - New Wrap loan from the WVJDC in the amount of \$7,879,443 at 0% for 18 years. The District will not begin making payments on this new Wrap loan until June, 2021. By June, 2021, the District's existing loan in the amount of \$7,950,000 will be paid off. Therefore, no additional increases in rates will be required in order to make the debt service payments on the new Wrap loan. The annual debt service payment on this loan will be \$437,747. The debt service reserve on the existing loan of \$7,950,000 will be fully funded by December, 2007. The District plans to carry that reserve amount to the new loan and, therefore, fully fund the debt service reserve of the new loan.
2. Bond # 2 - New loan from the WVJDC in the amount of \$2,411,178 at 0% for 30 years. The District will not begin making payments on this new loan until June, 2009. The District has connected an average of 71 new sewer customers per year for the last 4 years. The District estimates that an additional rate increase will not be required in June, 2009, in order to make the debt service payments on this new loan if the average sewer customer growth continues. The annual debt service payment on this loan will be \$73,680. The debt service reserve on the District's existing loan in the amount of \$2,000,000 will be full[y] funded by March, 2007. The District plans to carry that reserve amount to the new loan and, therefore, fully fund the debt service reserve of the new loan.
3. New Bond Anticipation Note from the WVJDC in the amount of \$6,278,779. This new Bond Anticipation Note will have a[n]

²See *Lubeck Public Service District*, Case No. 98-0009-PSD-CN (August 11, 1998).

interest rate of 0% and will be refinanced by March 12, 2010. Therefore, an immediate rate increase will not be needed to pay for this loan. The financial notes attached to the District's annual audit state that the future debt service payments of this loan are expected to be paid by customer growth. The financial notes also state that if future revenue does not support these future payments, this loan may be turned into a grant from the WVJDC.

Staff referenced the WVJDC's letter of condition regarding the two new loans and the new \$16,569,400 Bond Anticipation Note, as well as the WVJDC's commitment of an additional \$20,000 of commitment funding, less \$600 in administrative fees over six years.

Staff prepared a per books cash flow and analysis and determined that the District is operating at a loss of \$13,692 and a debt service coverage of 107.21% for the test year. Staff notes that the debt service is below the 115.0% coverage required by the District's bondholders.

Thus, Staff first recommended that the District's petition of its bond anticipation note restructuring and two new loans, as outlined above, be approved pursuant to West Virginia Code §16-13A-25. Second, Staff suggested that if any additional changes in financing occur, the District be required to seek permission from the Commission before proceeding. Finally, Staff recommended that the District immediately apply to the Commission for an increase in rates and charges to cover the costs of its current operating expenses and to be in compliance with the bondholder requirement of 115% debt service coverage.

The District filed correspondence on February 16, 2005, clarifying certain information contained in Staff's cash flow exhibit to its memorandum.

In response, Staff filed a Further Final Joint Staff Memorandum on February 28, 2005. Staff made necessary adjustments to its cash flow statement and attached the same to its memorandum. As the revised cash flow statement shows a surplus of \$30,427 and debt service coverage of 116.76%, Staff rescinded its prior recommendation to require the District to immediately apply for a rate increase.

DISCUSSION

Upon review of all of the foregoing, the Commission agrees with the Staff recommendations and will approve the District's petition to restructure its Bond

Anticipation Note, to be broken into three parts, as outlined in detail above and summarized as follows: Bond # 1 - \$7,879,443 New Wrap Loan from the WVIJDC at 0% for 18 years; Bond # 2 - \$2,411,178 New Loan from the WVIJDC at 0% for 30 years; and a New Bond Anticipation Note from the WVIJDC in the amount of \$6,278,779 at 0% interest, to be refinanced by March 12, 2010.

FINDINGS OF FACT

1. On February 3, 2005, the District filed a petition for approval to restructure the Bond Anticipation Note which was previously approved in Case No. 98-0009-PSD-CN.

2. On February 9, 2005, a copy was filed of correspondence from the WVIJDC to the District, approving the District's request to convert a portion of the Bond Anticipation Note to bonds and to reissue a smaller bond anticipation note as outlined on an attachment to the letter.

3. On February 15, 2005, Staff recommended that the District's petition of its bond anticipation note restructuring and two new loans, as outlined above, be approved pursuant to West Virginia Code §16-13A-25. Staff also recommended that if any additional changes in financing occur, that the District be required to seek permission from the Commission before proceeding.

CONCLUSION OF LAW

The District's petition should be approved to restructure its Bond Anticipation Note, to be broken into three parts, as outlined in detail above and summarized as follows: Bond # 1 - \$7,879,443 New Wrap loan from the WVIJDC at 0% for 18 years; Bond # 2 - \$2,411,178 New loan from the WVIJDC at 0% for 30 years; and a New Bond Anticipation Note from the WVIJDC in the amount of \$6,278,779 at 0% interest, to be refinanced by March 12, 2010.

ORDER

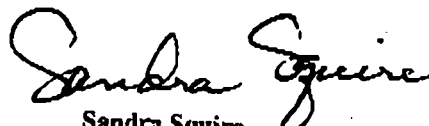
IT IS, THEREFORE, ORDERED that the Lubeck Public Service District's petition to restructure its Bond Anticipation Note, as filed on February 3, 2005, is hereby approved, consisting of a \$7,879,443 New Wrap Loan from the WVIJDC at 0% for 18 years; a \$2,411,178 New Loan from the WVIJDC at 0% for 30 years; and a New Bond Anticipation Note from the WVIJDC in the amount of \$6,278,779 at 0% interest.

IT IS FURTHER ORDERED that in the event of any change to the funding, terms of financing, plans, or scope of the approved project, the District shall petition the Commission to reopen this proceeding for approval of the same

IT IS FURTHER ORDERED that, upon entry hereof, this proceeding shall be removed from the Commission's active docket of cases.

IT IS FURTHER ORDERED that the Commission's Executive Secretary serve a copy of this order upon all parties of record by United States First Class Mail and upon Commission Staff by hand delivery.

A True Copy, Teste:


Sandra Squire
Executive Secretary

TBS/ljm
050115c.wpd

ORIGINAL

ENTERED
98 N

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

FINAL

Entered: July 31, 1998

8-11-98
By Commission Order

CASE NO. 98-0009-W-CN

LUBECK PUBLIC SERVICE DISTRICT,

Application for a certificate of convenience and necessity to construct forty (40) miles of sanitary sewer lines and appurtenances in addition to a 1.5 MGD (Million gallons per day) wastewater treatment plant.

RECOMMENDED DECISION

On February 25, 1998, the Lubeck Public Service District (District) filed an application with the Public Service Commission, pursuant to West Virginia Code §24-2-11, for a certificate of public convenience and necessity to construct a new water treatment facility and forty miles of sanitary sewer lines.

On March 2, 1998, the Commission directed the District to publish the Notice of Filing, once, in a newspaper duly qualified by the Secretary of State, published and generally circulated in Wood County. On March 4, 1998, the Commission directed the District to publish the Revised Notice of Filing. On March 5, 1998, the Commission directed the District to publish a Further Revised Notice of Filing. The Further Revised Notice of Filing provided that, if no substantial protests were filed within thirty (30) days, the Commission may waive formal hearing and grant the certificate, based upon its review of the evidence submitted with the application. On March 20, 1998, the District filed the appropriate affidavits of publication.

On March 9, 1998, the Commission entered the Commission Referral Order in this proceeding. The Commission established a decision due date of on or before October 1, 1998.

By Procedural Order of March 20, 1998, the matter was set for hearing on May 29, 1998.

On April 16, 1998, the Commission received a protest to the application filed by Lee H. Sylvester.

By Procedural Order of April 22, 1998, the District was ordered to publish notice of the hearing. On May 13, 1998, the District filed a publication affidavit indicating appropriate publication.

The hearing was held as scheduled. John Philip Melick, Esquire, appeared on behalf of the District. James V. Kelsh, Esquire, appeared on behalf of the Staff. Numerous individuals appeared at hearing to offer public comment.

On July 29, 1998, the District submitted a copy of the DEP approval of the project. The DEP approval was issued on July 6, 1998.

PUBLIC COMMENT

A. K. Wilson lives in Melrose Addition. (Tr. 5). When he built his home twenty-eight years ago, he was told that there would be sewer service within two years but he is still waiting. (Tr. 5). Mr. Wilson strongly supports the project. (Tr. 5). He realizes that his lawn will be torn up and that he might lose a tree or two but all of those sorts of problems can be fixed. (Tr. 5). The need for public sewer is far greater than any concern over his yard. (Tr. 5).

William McMahon lives at the end of Robin Lane in Lubeck. (Tr. 5). Mr. McMahon was informed that the sewer line would be in front of his home within 200 feet of his property and that he would be required to hook up. (Tr. 6). Mr. McMahon does not believe that he can afford to hook up to the system because of the dirt and rocks that are in front of his home. (Tr. 6). Mr. McMahon understands that the District later intends to install a line behind his home in order to hook up additional customers. (Tr. 6). He believes that it would be better to allow him to wait for the later line which will run behind his home. (Tr. 6). He is also concerned with the requirement that he hook to the system. (Tr. 6).

Gary Bibbee lives in an area with a lot of elderly residents on fixed incomes. (Tr. 7). He is concerned about the high cost of the project. (Tr. 7). Mr. Bibbee indicated that most individuals would have to pay several thousand dollars for new septic systems if they ever tried to sell their property, so maybe it would be better to have public sewer service. (Tr. 7). Currently Mr. Bibbee's sewage runs right out on his neighbor's property. (Tr. 8).

Clem Dower was concerned with the timing of the hearing. (Tr. 10). He believed that an evening hearing would have been beneficial. (Tr. 10). It was explained to Mr. Dower that no request for an evening hearing had been made in this case.

Lee Sylvester indicated that the project was proposed to cost \$12,000,000 in 1992 and now it is estimated to cost \$30,000,000. (Tr. 13) Mr. Sylvester believes that the costs were driven up by trying to take in too many outlying subdivisions such as Westwood. (Tr. 13). He advocated eliminating some of the areas to be served in order to reduce costs. (Tr. 13). Mr. Sylvester supports the project and believes that it is desperately needed but believes it is too expensive as proposed. (Tr. 13). Mr. Sylvester indicated that the new bill will be \$111.64 for 8,400 gallons. (Tr. 13).¹ Mr. Sylvester currently has a septic system which is in poor

¹Actually, the bill for 8,400 gallons under the rates agreed to by Staff and the District would be \$73.67. It should also be

condition. (Tr. 14). The ground in the Lubeck area is not well suited for septic systems. (Tr. 14). Mr. Sylvester believes that a block rate billing system may reduce costs. (Tr. 15). Mr. Sylvester complained that the District was not cooperative with him when he tried to review project plans. (Tr. 16). It took three trips to the District office before they would allow him to see any documents related to the project. (Tr. 16). Mr. Sylvester believes that Public Service District Boards should be elected by the public. (Tr. 16).

Kathy Tanner lives in McPherson Manor. (Tr. 17). She has a septic system which works perfectly. (Tr. 17). Her system was put into place in accordance with all county specifications. (Tr. 17). She does not believe that there should be grandfathering with septic systems. (Tr. 17). If they are not up to current standards, the owner should be forced to update the systems. (Tr. 17). The development is on sand which makes excellent conditions for septic systems. (Tr. 17). The sand perks well. (Tr. 17). Ms. Tanner uses a sprinkler system for her grass and desires a second water tap so she does not pay sewer fees for the sprinkler water. (Tr. 17). Ms. Tanner's neighbor, John Shosted, informed Ms. Tanner that his septic system was in bad shape. (Tr. 17). He was glad the sewer system was proposed. (Tr. 17). Ms. Tanner believes that the problem for Mr. Shosted is that his system was installed improperly. (Tr. 18). Ms. Tanner is also concerned that the proposed treatment plant is too close to homes. (Tr. 18). Ms. Tanner indicated that in many of the areas subdivisions the raw sewage problem is bad. (Tr. 18). The smell is so bad that you cannot drive through the area with your car windows down. (Tr. 18).

Betty Moreland lives in Fairview Acres. (Tr. 19). She indicated that septic systems do not work in her area. (Tr. 20). The sewage overflows and runs across the surface. (Tr. 20). Just walking in the subdivision, you can tell when someone flushes a commode because you can see the water flowing. (Tr. 20). She has witnessed children playing in the neighborhood get raw sewage on them. (Tr. 20). The stench is so bad that it is hardly bearable. (Tr. 20). Many people do laundry late at night to have the worse smell after people are indoors. (Tr. 20). Ms. Moreland believes that the whole problem is unhealthy for the community. (Tr. 20). She hates to see families' pets wading through the sewage. (Tr. 20). The situation is not fair because a neighboring subdivision, Terrytown, has a public sewer. (Tr. 20).

Larry Baker resides in Greenup Addition. (Tr. 21). He has lived there ten years. (Tr. 21). A new septic system was installed shortly before he moved into his home. (Tr. 21). Septic systems in his neighborhood are not working properly. (Tr. 21). There is sewage sludge piled up all around the community. (Tr. 21). The odor is difficult to handle. (Tr. 21). Mr. Baker's only concern about the project is that Greenup Addition has put a lot of money in its roads and they are all in good condition. (Tr. 22). If the roads are torn up by the project, he would hope they would be put back into their original condition. (Tr. 22). He would prefer that the lines not run under the roads. (Tr. 22).

noted that the average family of four in West Virginia uses only 4,500 gallons a month.

Millie Wright has had such problems with her septic system that she had a second system put in the ground beside the first to help alleviate the problems. (Tr. 22). Ms. Wright strongly supports the proposed project. (Tr. 22).

Raymond Bradley moved into the area in 1936. (Tr. 23). He has installed two separate septic systems but has never had one work properly. (Tr. 23). Most of the Lubeck district is clay and rock. (Tr. 23). The water simply comes to the top of the ground. (Tr. 23) Mr. Bradley realizes that the project is expensive but the public sewer system is important. (Tr. 23). He considered receiving public water service as one of the greatest things that happened to his community. (Tr. 23). Mr. Bradley believes that public sewer service is needed. (Tr. 24). Mr. Bradley sometimes does not sleep worrying about his septic system. (Tr. 25). He had one system collapse and had to dig it out and dip it out. (Tr. 25). He strongly supported the project. (Tr. 25).

John Nicholson has witnessed many unhealthy situations where raw sewage is in people's yards. (Tr. 28). He has seen the same problem in his own yard. (Tr. 28). Mr. Nicholson has been bugging the District to do something for years. (Tr. 28). Mr. Nicholson supports the project. (Tr. 28).

Dave Mangus lives in McPherson Addition and currently has sewer service. (Tr. 28). The project will double his sewer bill. (Tr. 28). His new water and sewer bill will be more than \$100 a month. (Tr. 28). Mr. Mangus is also concerned because the District plans to place the treatment plant in his neighborhood when there are thousands of acres of vacant land in the area. (Tr. 28). He believes that the placement of the treatment plant in his neighborhood will lower his property value. (Tr. 29). Mr. Mangus believes the project will result in rates that are too high. (Tr. 29).

Dennis Kane indicated that he believed there was a large potential for growth in the area. (Tr. 116).

Judith Hughes lives in Washington Gardens and believes that the project is desperately needed and should be approved. (Tr. 117).

Dick Johnson lives on Blennerhassett Heights and is in total agreement with the project. (Tr. 117). Mr. Johnson offered to sign a right-of-way agreement on the spot and seemed concerned that acquiring right-of-ways may delay the project. (Tr. 119).

Jim Lawrence is concerned with the width of temporary right-of-ways associated with the project. (Tr. 123). He also felt that it was unfair to take right-of-ways on small lots. (Tr. 124).

Eugene McPherson has a good septic system but still is 100% behind the project. (Tr. 125). He believes that it is badly needed. (Tr. 125).

David Lawson is from Washington and believes that a public sewer system would be an asset to the whole area. (Tr. 126). Mr. Lawson was critical of the District indicating that the District was not adequately sharing information with the public about the project. (Tr. 126). Mr. Lawson owns

property near the proposed treatment plant. (Tr. 127). Mr. Lawson is concerned about the smells associated with the treatment plant. (Tr. 131). Mr. Lawson was also concerned that the District was not offering the owner of the land where the treatment plant is to be built an adequate amount of money for the property. (Tr. 132).

EVIDENCE

James Cox has been the general manager of the District for about twelve years altogether. (Tr. 31). The District has provided water service since 1959 and sewer service since the 1970s through certain package plants. (Tr. 31). A package plant is a small treatment plant that typically covers one subdivision. (Tr. 31). The package plants the District operates range in size from 1,500 gallons per day to 40,000 gallons per day. (Tr. 31). There is no physical interconnection between the various package plants that the District currently operates. (Tr. 32). The District operates 16 package plants that serve 14 subdivisions. (Tr. 32). There is a total of 22 package plants in the project area. (Tr. 32). The other plants are operated by subdivisions or the County School Board. (Tr. 33). The project would eliminate five of these non-District plants and leave one plant in place. (Tr. 34).

The District has had increasing trouble operating the package plants. (Tr. 32). The plants are on average about twenty years old and in poor repair. (Tr. 45). In the last four-year period the District has had 471 environmental violations related to the package plants. (Tr. 32). The Division of Environmental Protection (DEP) is always tightening discharge requirements. (Tr. 32). The District had made application for a new package plant on Sandy Creek but was informed that the stream was at capacity and no additional discharge permits would be issued for the stream. (Tr. 33). The District has been informed that Neal Run is also at capacity. (Tr. 33).

The District looked into the alternative of repairing and replacing the package plants and the resulting rate for the currently served customers came out about the same as it did under the proposed project. (Tr. 45). The alternative of upgrading and replacing the package plants would not serve any new customers. (Tr. 45). A central treatment plant would also provide more reliable treatment of effluent than having 16 package plants. (Tr. 46). With small package plants, it does not take much to upset the plant. (Tr. 46). For instance, someone may pour something down the drain that would impair the treatment of a small package plant but the same amount of input would not seriously impair a large treatment plant. (Tr. 46).

The District began looking into a central sewer project some 29 years ago. (Tr. 34). Originally, the plans called for Parkersburg to treat the sewage but the proposal still would have cost the District \$24,000,000. (Tr. 35). In 1980, it was decided that the project was not feasible. (Tr. 35).

None appear to be operated by entities regulated by the Commission. (Tr. 47).

The District's oldest package plant was constructed in 1971 and its newest plant was constructed in 1983. (Tr. 45).

35). The District also considered an Innovative and Alternative system with grinder pumps and vacuum lines but was not able to reduce costs with that design. (Tr. 35). Mr. Cox has been involved with the current project since 1980. (Tr. 40).

In 1985, the District installed a mile-and-a-half of line in the Larkmead area and connected it to Parkersburg. (Tr. 35). That construction allowed the District to eliminate one package treatment plant. (Tr. 35).

Parkersburg does not have the needed capacity to treat additional District flows from the eastern side of the District. (Tr. 36). The project calls for the District plant to treat flows from both the eastern and western portions of the District. (Tr. 36). There were also problems related to transmission of the sewage to Parkersburg. (Tr. 37).

Mr. Cox believes that this is the last opportunity to sewer the District because of the 1% financing from the DEP's State Revolving Fund. (Tr. 36). The Infrastructure Council's Bond Anticipation Notes are also very favorable to the District. (Tr. 36).

The District views the project as a new starting point from which it could further expand its system. (Tr. 39). The District currently has more than 3,500 water customers and 700 sewer customers. (Tr. 39). The project would add another 1,200 sewer customers. (Tr. 39). There is potential for substantial growth as new collection lines are laid in the future. (Tr. 40). Mr. Cox receives calls from individual home owners and from developers who are attempting to get public sewer service. (Tr. 41).

About 1,100 of the new sewer customers under the project would be taken off of individual septic systems. (Tr. 47). Many of these systems are failing and creating a health hazard. (Tr. 48).

The DEP is reviewing the District's plans. (Tr. 42). The District agreed to submit DEP approval as a post-hearing exhibit. (Tr. 42).

Ronald Schultz is a registered engineer with Burgess & Nipple, Ltd. (Tr. 49). Mr. Schultz testified that many of the parts of a package plant, including blowers and pumps, have useful lives of between 15 and 20 years. (Tr. 51). Mr. Schultz prepared cost estimates to upgrade the various package plants and the resulting rates were roughly equivalent to the rates proposed by the District for the current project. (Tr. 52, 53).

The proposed treatment plant will be capable of treating a maximum daily flow of 3,000,000 gallons a day. (Tr. 53). The expected average daily flow from the proposed customers is 1,500,000 gallons a day. (Tr. 53). The plant is an aeration facility involving two oxidation ditches. (Tr. 54). Ultraviolet light will be used also to disinfect the waste. (Tr. 54). The plant will use aerobic digestion of the sludge generated by the plant. (Tr. 54). The sludge will eventually be transported to the county landfill or used for land application. (Tr. 130). The plant has been laid out so that it is easily expandable in the future. (Tr. 54). The plant will discharge into the Ohio River. (Tr. 54).

The general location of the treatment plant was identified in the facilities plan prepared by the District. (Tr. 55). The District

identified various possible locations for the plant. (Tr. 56). Mr. Schultz is convinced that the selected site is the best of the initial locations selected by the District. (Tr. 56). The plant needs to be able to discharge into the Ohio River because the other receiving streams in the area are fully loaded now. (Tr. 56). To attempt to discharge in either Neal Run or Sandy Creek would have involved much smaller flow and effluent limitations and accordingly a much more expensive system. (Tr. 56). The selected site for the plant is near the mouth of Sandy Creek which works well for the gravity transportation of much of the sewage in the area. (Tr. 57). The site is not in a planned subdivision. (Tr. 57).

Mr. Schultz believes that the plans are a reasonable way to economically provide public sewer service to the area. (Tr. 58). The system was designed to serve the maximum number of customers with the least overall construction cost. (Tr. 60).

Elbert N. Morton is an engineer with the Construction Assistance Division of the DEP. (Tr. 62). DEP money is involved in the project in terms of a State Revolving Fund loan. (Tr. 64). Mr. Morton believed that the projected costs associated with the project were reasonable. (Tr. 66).

Mr. Morton believes that the project is in the public interest because it gets rid of the failing septic systems which are located in the area. (Tr. 67). It also eliminates the malfunctioning package plants in the area which had about 413 environmental violations in a four-year period. (Tr. 67). The DEP is supporting similar projects throughout the state. (Tr. 69). Only the Ohio River could handle the discharge from a plant the size the District is proposing. (Tr. 68).

Philip R. Postlewait is a certified public accountant working for the District. (Tr. 71, 72). Mr. Postlewait testified that the proposed rates are adequate to recover the cost of building, financing, operating and maintaining the proposed system. (Tr. 73).

The proposed financing is very favorable with a loan from the SRF of \$7,950,000; a loan from the Infrastructure and Jobs Council of \$2,000,000 at zero percent; and about \$16,550,000 of bond anticipation notes. \$7,950,000 of bond anticipation notes will be converted to a second SRF loan in twenty years. (Tr. 76). The remaining notes of some \$8,600,000 will either be converted into loans or into grants depending on the amount of customer growth the District experiences. (Tr. 76). The amount converted to grants is limited to 50% of the project cost. (Tr. 74). The bond anticipation notes will be evaluated for conversion in five year periods with the evaluation being based on customer growth of the District. (Tr. 77).

The history of the District is for rapid growth. (Tr. 75). Since 1972, the District has added an average of 87 water customers a year. (Tr. 75). The growth comes from both new customers being served off of existing pipe and new extensions of lines. (Tr. 76). Many of the lines have been laid by developers and turned over to the District. (Tr. 76). The District is projecting a growth of 50 sewer customers a year. (Tr. 75). No evidence was offered as to the general population trend in Wood County. (Tr. 78).

The District adjusted the proposed tap fee from \$500 to \$300 at the request of Staff. (Tr. 81). Only new customers of the District would have to pay the tap fee. (Tr. 82).

Mr. Postlewait developed an estimate of rates needed to try and repair the existing package plants. (Tr. 86). Given that no new customers shared in the expense and due to very high operating and maintenance expenses, the rates were averaging \$42 to \$43 a month for the average customer. (Tr. 87). His analysis assumed the same sort of favorable financing as received for the proposed project which was unlikely because low cost financing is more easily available when new unserved customers are added. (Tr. 86, 87). The average bill under the proposed project is \$43.70 for a 4,500 gallon bill. (Tr. 91).

The rate structure proposed is the same sewer rate structure used by the District currently except that under the proposal the minimum bill has been lowered. (Tr. 92). Small use customers who can conserve water will be helped by the modification. (Tr. 93).

Earl L. Burgess, Jr., is the Executive Director of the Mid-Ohio Valley Health Department. (Tr. 96). Mr. Burgess indicated that the sewage problems inside the Lubeck area are extreme. (Tr. 98). About 65% of the septic systems are failing and in some subdivision as many as 85% of the systems are failing. (Tr. 98). Many of the systems were put in before 1970, when regulations were first started. (Tr. 98). Many of the systems were substandard. (Tr. 98). Most of the soil conditions in the area cause septic system failures. (Tr. 98). Many of the "hollows" between Lubeck and the Ohio River run black with raw sewage. (Tr. 98, 99).

Many of the homes in the area could not be sold without improving the septic systems. (Tr. 99). Many could not install an approved septic system because the lots are too small. (Tr. 99). Many undeveloped lots will never be developed without a public sewer because ground conditions make septic systems impossible. (Tr. 99).

David Dove is an engineer for Commission Staff. (Tr. 100). Mr. Dove testified that the plans and specifications for the project submitted by the District comply with the Commission's rules and regulations. (Tr. 102).

Geert Bakker prepared the financial section of the Staff report. (Tr. 103). The proposed average rate of \$43.70 is high but not the highest in the state. (Tr. 104). The rates are so high because of the large amount of capital needed to construct the project. (Tr. 104).

Mr. Bakker testified that, if the bond anticipation notes are not converted to loans in 40 years, they automatically become grants. (Tr. 107). Mr. Bakker believes that the growth estimate used in the case is conservative for the District. (Tr. 108). Failure to grow will not result in higher rates but merely more grant funding for the project. (Tr. 108, 109). Any risk associated with the bond anticipation notes lies with the Infrastructure Council. (Tr. 110).

The project costs are estimated to be \$26,500,000. (Staff Ex. 1). Staff indicated that the project cost per customer is \$13,900, which Staff views as "high but not unusual." (Staff Ex. 1). Customer density will be

48.13 customers per mile which Staff views as "very acceptable." (Staff Ex. 1). Projected operating and maintenance costs are \$516,000 annually or \$22.56 per customer per month which Staff considers "high but acceptable." (Staff Ex. 1).

Staff believes that need has been demonstrated by the District. (Staff Ex. 1). Staff recommends that the project be approved contingent upon approval by the DEP. (Staff Ex. 1).

DISCUSSION

The District has demonstrated that public convenience and necessity require the project. The District has experienced numerous environmental violations attempting to operate its various package plants which are in poor condition. The need for public sewer service in the project area to serve customers currently served by septic systems was also clearly demonstrated. Existing private septic systems are not working well and the resulting environmental damage is extreme.

To upgrade the package plants would result in rates which are roughly the same as proposed for the larger project. Such an approach would not result in the service to any new customers. The District properly rejected such an approach.

Although some complaints were made by individuals making public comment about the proposed location for the treatment plant, the proposed location is reasonable. It is critical for the plant to be able to discharge in the Ohio River. The proposed location, near the mouth of Sandy Creek, will enable most of the sewage to flow by gravity.

The proposed financing is reasonable and should be approved. The bond anticipation notes are a relatively novel approach for financing of utility construction in West Virginia but pose no risk to utility customers. Any risk associated with the instruments lies with the Infrastructure Council.

The Staff-recommended rates have been accepted by the District. They are reasonable and should be approved for use by the District upon substantial completion of the project.

FINDINGS OF FACT

1. On February 25, 1998, the Lubeck Public Service District filed an application with the Public Service Commission, pursuant to West Virginia Code §24-2-11, for a certificate of public convenience and necessity to construct a new water treatment facility and forty miles of sanitary sewer lines. (See application).

2. The District has made proper publication of its filing and of the public hearing. (See affidavits filed March 20, 1998, and May 13, 1998).

3. The District operates 16 package plants that serve 14 subdivisions in the project area. (Tr. 32). There are six additional package plants in the project area not operated by the District. (Tr. 32, 33). The project

would eliminate all of the District's package plants and five of these non-District plants. (Tr. 34).

4. The District has had increasing trouble operating the package plants and in the last four-year period has had 471 environmental violations related to the package plants. (Tr. 32).

5. The plants are on average about twenty years old and in poor repair. (Tr. 45).

6. The District has been informed by the DEP that no additional discharge permits would be issued for Sandy Creek or Neal Run because the streams are running at environmental capacity. (Tr. 33).

7. To repair and/or replace the package plants would result in rates for the currently served customers which are roughly the same as under the proposed project but would not serve any new customers. (Tr. 45, 52, 53, 87).

8. A central treatment plant would also provide more reliable treatment of effluent than having 16 package plants. (Tr. 46).

9. The District has been exploring ways to sewer the area for many years and has considered various options including treatment by Parkersburg and innovative and alternative systems. (Tr. 34, 35, 40).

10. Parkersburg does not have the needed capacity to treat additional District flows from the eastern side of the District. (Tr. 36). There were also problems related to transmission of the sewage to Parkersburg. (Tr. 37).

11. The District views the project as a new starting point from which it could further expand its system. (Tr. 39). There is potential for substantial growth as new collection lines are laid in the future. (Tr. 40).

12. The District currently has more than 3,500 water customers and 700 sewer customers. (Tr. 39). The project would add another 1,200 sewer customers. (Tr. 39).

13. Mr. Cox receives frequent calls from individual home owners and from developers who are attempting to get public sewer service. (Tr. 41).

14. About 1,100 of the new sewer customers under the project would be taken off of individual septic systems. (Tr. 47).

15. There are serious problems with existing septic systems and existing sewage disposal in the project area. (Tr. 8, 14, 17, 18, 20, 21, 22, 23, 28, 47, 48, 67, 98, 99).

16. The proposed treatment plant will be capable of treating a maximum daily flow of 3,000,000 gallons a day. (Tr. 53). The expected average daily flow from the proposed customers is 1,500,000 gallons a day. (Tr. 53).

17. The plant is an aeration facility involving two oxidation ditches. (Tr. 54). Ultraviolet light will be used also to disinfect the waste. (Tr. 54). The plant will use aerobic digestion of the sludge generated by the plant. (Tr. 54). The sludge will eventually be transported to the county landfill or used for land application. (Tr. 130).

18. The plant will discharge treated fluids into the Ohio River. (Tr. 54). The plant needs to be able to discharge into the Ohio because the other receiving streams in the area are fully loaded now. (Tr. 56, 68).

19. The plant has been laid out so that it is easily expandable in the future. (Tr. 54).

20. The selected site for the treatment plant is near the mouth of Sandy Creek which works well for the gravity transportation of much of the sewage in the area. (Tr. 57). The site is not in a planned subdivision. (Tr. 57).

21. The Staff-recommended rates are adequate to recover the cost of building, financing, operating and maintaining the proposed system. (Tr. 73, Staff Ex. 1).

22. The proposed financing is very favorable, with a loan from the SRF of \$7,950,000 at 1%; a loan from the Infrastructure and Jobs Council of \$2,000,000 at zero percent; and about \$16,550,000 of bond anticipation notes. \$7,950,000 of the bond anticipation notes will be converted to a second SRF loan in twenty years. (Tr. 76). The remaining notes of some \$8,600,000 will either be converted into loans or into grants depending on the amount of customer growth the District experiences. (Tr. 76).

23. The history of the District is for rapid growth. (Tr. 75). Since 1972, the District has added an average of 87 water customers a year. (Tr. 75). The District is projecting a growth of 50 sewer customers a year. (Tr. 75).

24. The District adjusted the proposed tap fee from \$500 to \$300 at the request of Staff. (Tr. 81).

25. The average bill under the proposed project is \$43.70 for a 4,500 gallon bill. (Tr. 91).

26. About 65% of the septic systems in the project area are failing and in some subdivision as many as 85% of the systems are failing. (Tr. 98). Many of the systems were put in before 1970, when regulations were first started. (Tr. 98). Many of the systems were substandard. (Tr. 98). Most of the soil conditions in the area cause septic system failures. (Tr. 98).

27. The plans and specifications submitted by the District comply with the Commission's rules and regulations. (Tr. 102).

28. If the bond anticipation notes are not converted to loans in 40 years, they automatically become grants. (Tr. 107).

29. Failure of the District to grow will not result in higher rates but merely more grant funding for the project. (Tr. 108, 109). Any risk associated with the bond anticipation notes lies with the Infrastructure Council. (Tr. 110).

30. The project costs are estimated to be \$26,500,000. (Staff Ex. 1).

31. Staff indicated that the project cost per customer is \$13,900, which Staff views as "high but not unusual." (Staff Ex. 1). Customer density will be 48.13 customers per mile which Staff views as "very acceptable." (Staff Ex. 1). Projected operating and maintenance costs are \$516,000 annually or \$22.56 per customer per month which Staff considers "high but acceptable." (Staff Ex. 1).

32. Staff recommends that the project be approved contingent upon approval by the DEP. (Staff Ex. 1).

33. The District filed a copy of final DEP approval of the project with the Commission on July 29, 1998. (See July 29, 1998 filing).

CONCLUSIONS OF LAW

1. Public convenience and necessity require the proposed project.
2. The proposed financing is reasonable and should be approved.
3. The District's application for a certificate of convenience and necessity should be granted.
4. The District should be required to seek Commission approval if the scope of the project or the proposed financing should change.

ORDER

IT IS, THEREFORE, ORDERED that the Lubeck Public Service District's application filed on February 25, 1998, for a certificate of convenience and necessity to construct a wastewater treatment plant and certain sewage collection lines, be, and hereby is, granted.

IT IS FURTHER ORDERED that proposed financing, consisting of a DEP State Revolving Fund loan of \$7,950,000 for twenty years at 1%; a West Virginia Infrastructure Council loan of \$2,000,000 for forty years at 0%; and \$16,550,000 of Bond Anticipation Notes issued by the Infrastructure Council, be, and hereby is, approved.

IT IS FURTHER ORDERED that, if the scope, design or the financing of the project is modified, the District shall petition the Commission for approval of any modification before proceeding to construction. If contingency funds are extended for purposes other than those within the scope of the project, the District shall petition the Commission for approval prior to expending those funds.

IT IS FURTHER ORDERED that the District is hereby authorized to charge the rates and charges set forth in Appendix A, upon substantial completion of the project. The District shall file an appropriate tariff with the Commission's tariff office upon substantial completion of the project.

The Executive Secretary hereby is ordered to serve a copy of this order upon the Commission Staff by hand delivery, and upon all parties of record by United States Certified Mail, return receipt requested.

Leave hereby is granted to the parties to file written exceptions supported by a brief with the Executive Secretary of the Commission within fifteen (15) days of the date this order is mailed. If exceptions are filed, the parties filing exceptions shall certify to the Executive Secretary that all parties of record have been served the exceptions.

If no exceptions are filed, this order shall become the order of the Commission, without further action or order, five (5) days following the expiration of the fifteen (15) day time period, unless it is ordered stayed or postponed by the Commission.

Any party may request waiver of the right to file exceptions to an Administrative Law Judge's order by filing an appropriate petition in writing with the Executive Secretary. No such waiver will be effective until approved by order of the Commission, nor shall any such waiver operate to make any Administrative Law Judge's Order or Decision the order of the Commission sooner than five (5) days after approval of such waiver by the Commission.



Keith A. George
Administrative Law Judge

KAG:s

LUBECK PUBLIC SERVICE DISTRICT
CASE NO. 98-0009-PSD-CN

APPROVED RATES

APPLICABILITY

Applicable in entire territory served.

AVAILABILITY OF SERVICE

Available for general domestic, commercial and industrial service.

RATES

A customer Charge of \$7.65 for each bill.

A Volumetric Charge of \$7.86 per 1,000 gallons.

MINIMUM CHARGE

\$7.65

CUSTOMERS WHO ARE NON-WATER USERS

All users of the Sanitary Sewer disposal service who are not users of the District's water service will be required to have a water meter installed on the private water system, at the District's cost, for the purpose of determining the sewer charge.

DELAYED PAYMENT PENALTY

The above tariff is net. On all accounts not paid in full within twenty (20) days of date of bill, ten percent (10%) will be added to the net amount shown. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

TAP FEE

\$300.00

RETURNED CHECK CHARGE FOR UNMETERED CUSTOMERS ONLY

The District may not collect any fee greater than that charged to it by a banking institution and under no circumstances shall the fee collected by the District exceed \$15.00.

ROOF CONNECTIONS

The connection of surface drains to the sanitary sewer system is prohibited by Public Service Commission Sewer Rules and Regulations 5.4.19. After a thirty day notice to disconnect, if the customer has not disconnected, the District shall bill at standard rates the inflow treated from such source. Said gallonage shall be computed by determining the square footage of the structure or source involved and the precipitation during the billing cycle period. The resulting gallonage quantity shall be the basis for this additional billing. Failure to disconnect said connections within six months of notice shall be basis for service termination.

LEAK ADJUSTMENT INCREMENT

\$1.79 per M gallons. To be used when the bill reflects unusual consumption which can be attributed to eligible leakage on customer's side of the meter. This rate is used to calculate consumption above the customer's historical average usage.

980009alj091100.wpd

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

Entered: September 11, 2000

CASE NO. 98-0009-PSD-CN

LUBECK PUBLIC SERVICE DISTRICT,
a public utility.

Application for a certificate of
convenience and necessity to
construct forty (40) miles of
sanitary sewer lines and appurtenances
in addition to a 1.5 MGD (million gallons
per day) wastewater treatment plant.

RECOMMENDED DECISION

On August 11, 1998, the Commission granted a certificate of convenience and necessity to the Lubeck Public Service District (Utility) for a project which would improve its treatment facilities and extend service to certain new customers. The Commission Order authorized the Utility to begin charging rates approved in the case "upon substantial completion of the project".

On July 3, 2000, the Utility petitioned the Commission to reopen the proceeding to establish a date of substantial completion. The Utility indicated that its engineer had found that substantial completion existed on May 8, 2000. Commission Staff's Inspector found that the project was substantially complete on June 7, 2000. The Utility indicated that, due to its billing system, it was unable to split a month with two different rates.

On August 11, 2000, Staff filed a Final Joint Staff Memorandum recommending that the rates and charges be approved from June 1, 2000, forward. Staff indicated that the Utility should not benefit because it was unable to charge two rates in the month of May 2000. Staff's Memorandum indicated that the Utility should file a response if it disagreed with the recommendation.

The Commission referred the matter to the Division of Administrative Law Judges on August 22, 2000. It established a decision due date of February 5, 2001.

The Utility has not responded to the August 7, 2000 Staff Memorandum.

DISCUSSION

7C

It shall be assumed from the lack of the Utility's response to the August 11, 2000 Staff Memorandum that it accepts the Staff recommendation that the substantial completion date should be June 1, 2000.

FINDINGS OF FACT

1, The proceeding was reopened upon the Utility's motion that the Commission establish a date of substantial completion.

2. By Memorandum of August 11, 2000, Staff recommended that the substantial completion date be established as June 1, 2000. (See, Memorandum of August 11, 2000).

3. The Utility did not respond to the Staff's Memorandum suggesting a June 1, 2000 date. (Case file generally).

CONCLUSION OF LAW

The Commission should establish a substantial completion date of June 1, 2000, for the project certificated on August 11, 1998.

ORDER

IT IS, THEREFORE, ORDERED that the date of June 1, 2000, be, and hereby is, established for the date of substantial completion of the Lubeck Public Service District's project.

The Executive Secretary is hereby ordered to serve a copy of this order upon the Commission by hand delivery, and upon all parties of record by United States Certified Mail, return receipt requested.

Leave is hereby granted to the parties to file written exceptions supported by a brief with the Executive Secretary of the Commission within fifteen (15) days of the date this order is mailed. If exceptions are filed, the parties filing exceptions shall certify to the Executive Secretary that all parties of record have been served said exceptions.

If no exceptions are so filed this order shall become the order of the Commission, without further action or order, five (5) days following

the expiration of the aforesaid fifteen (15) day time period, unless it is ordered stayed or postponed by the Commission.

Any party may request waiver of the right to file exceptions to an Administrative Law Judge's Order by filing an appropriate petition in writing with the Secretary. No such waiver will be effective until approved by order of the Commission, nor shall any such waiver operate to make any Administrative Law Judge's Order or Decision the order of the Commission sooner than five (5) days after approval of such waiver by the Commission.

Keith A. George
Administrative Law Judge

KG:jas
980009a.wpd

West Virginia Infrastructure & Jobs Development Council

Public Members:

Mark Prince
Hurricane
Dwight Calhoun
Petersburg
C.R. "Rennie" Hill, III
Beckley
Timothy P. Stranko
Morgantown

300 Summers Street, Suite 980
Charleston, West Virginia 25301
Telephone: (304) 558-4607
Facsimile: (304) 558-4609

Katy Mallory, PE
Executive Secretary

Katy.Mallory@verizon.net

February 9, 2005

James Cox, Manager
Lubeck Public Service District
P.O. Box 700
Washington, West Virginia 26181-0700

RE: Lubeck Public Service District
IJDC Project: 96S-275
\$16,550,000 Bond Anticipation Note

Dear Mr. Cox:

The West Virginia Infrastructure and Jobs Development Council (the "Council"), at its February 2, 2005 meeting, reviewed the Lubeck Public Service District's (the "District") request to restructure Sewerage System Bond Anticipation Notes 1999 (the "BAN") issued by the District to the West Virginia Water Development Authority on behalf of the Council. The BAN matures on March 1, 2006.

The Council reviewed and approved the District's request to convert a portion of the BAN to bonds and to reissue a smaller bond anticipation note as outlined on the attached Schedule A.

The Council will enter into Loan agreements with the District following receipt of the completed Schedule B, a final, non-appealable order from the Public Service Commission authorizing the borrowing and any other documents requested by the Council.

No statements or representations made before or after the issuance of this contingent commitment by any person or member of the Council shall be construed as approval to alter or amend this commitment, as all such amendments or alterations shall only be made in writing after approval of the Council.

James Cox
February 9, 2005
Page 2

If this commitment letter is acceptable to the District, please execute two copies of this letter and return to the Council at the above stated address not later than **March 15, 2005**. If the Council does not receive this acknowledged commitment letter by March 15, 2005, the Council shall consider this offer rejected.

If the District has any questions regarding this commitment, please contact Katy Mallory at the above-referenced telephone number.

Sincerely,



Mark Prince

MP/km
Attachments

NOTE: This letter is sent in triplicate. Please acknowledge receipt and immediately return two copies to the Council.

Lubeck Public Service District

By: _____

Its: _____

Date: _____

cc: ✓ Samme Gee, Esq., Jackson Kelly
Phil Postalwaite, CPA

WEST VIRGINIA INFRASTRUCTURE & JOBS DEVELOPMENT COUNCIL

Lubeck Public Service District
Sewer Project 96S-275
February 9, 2005

SCHEDULE A

A. Infrastructure Fund BAN closed March 9, 1999

- | | | |
|----|---|---------------------------|
| 1. | BAN Amount | \$16,550,000 |
| 2. | Maturity Date | March 1, 2006 |
| 3. | Repayments | \$100 / year (6 payments) |
| 4. | Remaining Balance on
March 1, 2006 (maturity date) | \$16,549,400 |

B. Restructure Infrastructure Fund BAN

- | | | |
|----|---|--|
| 1. | Total to be restructured | \$16,569,400 (\$16,549,400 remaining balance plus \$20,000 additional Infrastructure Commitment) |
| 2. | Loan #1 | \$7,879,443 |
| a) | Maturity Date: | March 1, 2039 |
| b) | Interest Rate: | 0% |
| c) | Repayments | Monthly to Municipal Bond Commission (commencing December 1, 2020) |
| d) | Debt Service Commencement | March 1, 2021 (to Infrastructure Fund) |
| e) | Reserve requirements:
(Requirement activates upon commencement the of debt service payments) | One year's annual debt service
OR
Funding one year's annual debt service over first ten years. |
| f) | Coverage | 115% unless reserve fund is fully funded then coverage is 110% |

2.	Loan #2	\$2,411,178
----	---------	-------------

- | | | |
|----|---|--|
| a) | Maturity Date: | March 1, 2039 |
| b) | Interest Rate: | 0% |
| c) | Repayments: | Monthly to Municipal Bond Commission (commencing March 1, 2009) |
| d) | Debt service commencement: | June 1, 2009 (to the Infrastructure Fund) |
| e) | Reserve requirements:
(Requirement activates upon commencement the of debt service payments) | One year's annual debt service
OR
Funding one year's annual debt service over first ten years. |
| f) | Coverage: | 115% unless reserve fund is fully funded then coverage is 110% |

3.	Loan #3	\$6,278,779
----	---------	-------------

- | | | |
|----|------------------------|---------------|
| a) | Bond Anticipation Note | \$6,278,779 |
| b) | Maturity Date: | March 1, 2010 |
| c) | Interest Rate: | 0% |
| d) | Debt Service Schedule: | |
| | June 1, 2006 | \$ 100 |
| | June 1, 2007 | \$ 100 |
| | June 1, 2008 | \$ 100 |
| | June 1, 2009 | \$ 100 |
| | March 1, 2010 | \$6,278,379 |
| e) | Reserve Requirement: | none |

LOAN AGREEMENT

THIS LOAN AGREEMENT, made and entered into in several counterparts, by and between the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY, a governmental instrumentality and body corporate of the State of West Virginia (the "Authority"), acting on behalf of the WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL (the "Council"), and the governmental agency designated below (the "Governmental Agency").

LUBECK PUBLIC SERVICE DISTRICT
(Governmental Agency)

W I T N E S S E T H:

WHEREAS, pursuant to the provisions of Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended (the "Act"), the Authority is empowered upon request of the Council to make loans to governmental agencies for the acquisition or construction of projects by such governmental agencies, subject to such provisions and limitations as are contained in the Act;

WHEREAS, the Governmental Agency constitutes a governmental agency as defined by the Act;

WHEREAS, the Governmental Agency is authorized and empowered by the statutes of the State to acquire, construct, improve, operate and maintain a project, as defined by the Act, and to finance the cost of acquisition and construction of the same by borrowing money to be evidenced by revenue bonds issued by the Governmental Agency;

WHEREAS, the Governmental Agency intends to construct, is constructing or has constructed such a project at the location and as more particularly described and set forth in the Application, as hereinafter defined (the "Project");

WHEREAS, the Governmental Agency has completed and filed with the Authority an Application for a Construction Loan with attachments and exhibits and an Amended Application for a Construction Loan also with attachments and exhibits (together,

as further revised and supplemented, the "Application"), which Application is incorporated herein by this reference; and

WHEREAS, having reviewed the Application and made all findings required by the Act and having available sufficient funds therefor, the Council has authorized the Authority to lend the Governmental Agency the amount set forth on Schedule X attached hereto and incorporated herein by reference, through the purchase of revenue bonds of the Governmental Agency with money in the Infrastructure Fund, subject to the Governmental Agency's satisfaction of certain legal and other requirements of the Council's loan program (the "Program") as hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter contained, the Governmental Agency and the Authority hereby agree as follows:

ARTICLE I

Definitions

1.1 Except where the context clearly indicates otherwise, the terms "Authority," "cost," "Council," "governmental agency," "project," "waste water facility" and "water facility" have the definitions and meanings ascribed to them in the Act.

1.2 "Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser of the Bonds, acting in its administrative capacity pursuant to Section 10 of the Act and upon authorization from the Council.

1.3 "Consulting Engineers" means the professional engineer, licensed by the State, designated in the Application and any qualified successor thereto; provided, however, when a Loan is made for a Project financed, in part, by the Office of Abandoned Mine Lands, "Consulting Engineers" shall mean the West Virginia Department of Environmental Protection, or any successor thereto.

1.4 "Infrastructure Fund" means the West Virginia Infrastructure Fund established in accordance with Section 9 of the Act.

1.5 "Loan" means the loan to be made by the Authority to the Governmental Agency through the purchase of Local Bonds, as hereinafter defined, pursuant to this Loan Agreement.

1.6 "Local Act" means the official action of the Governmental Agency required by Section 4.1 hereof, authorizing the Local Bonds.

1.7 "Local Bonds" means the revenue bonds to be issued by the Governmental Agency pursuant to the provisions of the Local Statute, as hereinafter defined, to evidence the Loan and to be purchased by the Authority, all in accordance with the provisions of this Loan Agreement.

1.8 "Local Statute" means the specific provisions of the Code of West Virginia, 1931, as amended, pursuant to which the Local Bonds are issued.

1.9 "Operating Expenses" means the reasonable, proper and necessary costs of operation and maintenance of the System, as hereinafter defined, as should normally and regularly be included as such under generally accepted accounting principles.

1.10 "Project" means the project hereinabove referred to, to be constructed, being constructed or already constructed by the Governmental Agency in whole or in part with the net proceeds of the Local Bonds.

1.11 "System" means the project owned by the Governmental Agency, of which the Project constitutes all or to which the Project constitutes an improvement, and any improvements thereto hereafter constructed or acquired from any sources whatsoever.

1.12 Additional terms and phrases are defined in this Loan Agreement as they are used.

ARTICLE II

The Project and the System

2.1 The Project shall generally consist of the construction and acquisition of the facilities described in the Application, to be, being or having been constructed in accordance with plans, specifications and designs prepared for the Governmental Agency by the Consulting Engineers, the Authority and Council having found, to the extent applicable, that the Project is consistent with the Act.

2.2 Subject to the terms, conditions and provisions of this Loan Agreement and the Local Act, the Governmental Agency has acquired, or shall do all things necessary to acquire, the proposed site of the Project and shall do, is doing or has done all things necessary to construct the Project in accordance with the plans, specifications and designs prepared for the Governmental Agency by the Consulting Engineers.

2.3 All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Governmental Agency, subject to any mortgage lien or

other security interest as is provided for in the Local Statute unless a sale or transfer of all or a portion of said property or any interest therein is approved by the Authority and Council.

2.4 The Governmental Agency agrees that the Authority and the Council and their duly authorized agents shall have the right at all reasonable times to enter upon the Project site and Project facilities and to examine and inspect the same. The Governmental Agency further agrees that the Authority and the Council and their duly authorized agents and representatives shall, prior to, during and after completion of construction and commencement of operation of the Project, have such rights of access to the System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority and the Council with respect to the System pursuant to the pertinent provisions of the Act.

2.5 The Governmental Agency shall keep complete and accurate records of the cost of acquiring the Project site and the costs of constructing, acquiring and installing the Project. The Governmental Agency shall permit the Authority and the Council, acting by and through their directors or their duly authorized agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at any and all reasonable times for the purpose of audit and examination, and the Governmental Agency shall submit to the Authority and the Council such documents and information as they may reasonably require in connection with the construction, acquisition and installation of the Project, the operation and maintenance of the System and the administration of the Loan or of any State and federal grants or other sources of financing for the Project.

2.6 The Governmental Agency agrees that it will permit the Authority and the Council and their agents and representatives to have access to the records of the Governmental Agency pertaining to the operation and maintenance of the System at any reasonable time following completion of construction of the Project and commencement of operation thereof or if the Project is an improvement to an existing system at any reasonable time following commencement of construction.

2.7 The Governmental Agency shall require that each construction contractor furnish a performance bond and a payment bond, each in an amount at least equal to one hundred percent (100%) of the contract price of the portion of the Project covered by the particular contract as security for the faithful performance of such contract and shall verify or have verified such bonds prior to commencement of construction.

2.8 The Governmental Agency shall require that each of its contractors and all subcontractors maintain, during the life of the construction contract, workers' compensation coverage, public liability insurance, property damage insurance and vehicle liability insurance in amounts and on terms satisfactory to the Council and the Authority and shall verify or have verified such insurance prior to commencement of construction. Until the Project facilities are completed and accepted by the Governmental Agency, the Governmental Agency or (at the option of the Governmental Agency) the contractor shall

maintain builder's risk insurance (fire and extended coverage) on a one hundred percent (100%) basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Governmental Agency, the prime contractor and all subcontractors, as their interests may appear. If facilities of the System which are detrimentally affected by flooding are or will be located in designated special flood or mudslide-prone areas and if flood insurance is available at a reasonable cost, a flood insurance policy must be obtained by the Governmental Agency on or before the Date of Loan Closing, as hereinafter defined, and maintained so long as any of the Local Bonds is outstanding. Prior to commencing operation of the Project, the Governmental Agency must also obtain, and maintain so long as any of the Local Bonds are outstanding, business interruption insurance if available at a reasonable cost.

2.9 The Governmental Agency shall provide and maintain competent and adequate engineering services satisfactory to the Council and the Authority covering the supervision and inspection of the development and construction of the Project, and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such engineer shall certify to the Authority, the Council and the Governmental Agency at the completion of construction that construction is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies.

2.10 The Governmental Agency shall at all times provide operation and maintenance of the System in compliance with any and all State and federal standards. The Governmental Agency shall employ qualified operating personnel properly certified by the State to operate the System during the entire term of this Loan Agreement.

2.11 The Governmental Agency hereby covenants and agrees to comply with all applicable laws, rules and regulations issued by the Council, the Authority or other State, federal or local bodies in regard to the construction of the Project and operation, maintenance and use of the System.

2.12 The Governmental Agency, commencing on the date contracts are executed for the acquisition or construction of the Project and for two years following the completion of acquisition or construction of the Project, shall each month complete a Monthly Financial Report, the form of which is attached hereto as Exhibit C and incorporated herein by reference, and forward a copy by the 10th of each month to the Authority and Council.

ARTICLE III

Conditions to Loan; Issuance of Local Bonds

3.1 The agreement of the Authority and Council to make the Loan is subject to the Governmental Agency's fulfillment, to the satisfaction of the Authority and the Council, of each and all of those certain conditions precedent on or before the delivery date for the Local Bonds, which shall be the date established pursuant to Section 3.4 hereof. Said conditions precedent are as follows:

(a) The Governmental Agency shall have performed and satisfied all of the terms and conditions to be performed and satisfied by it in this Loan Agreement;

(b) The Governmental Agency shall have authorized the issuance of and delivery to the Authority of the Local Bonds described in this Article III and in Article IV hereof;

(c) The Governmental Agency shall either have received bids or entered into contracts for the construction of the Project which are in an amount and otherwise compatible with the plan of financing described in the Application; provided that, if the Loan will refund an interim construction financing, the Governmental Agency must either be constructing or have constructed its Project for a cost and as otherwise compatible with the plan of financing described in the Application; and, in either case, the Authority and the Council shall have received a certificate of the Consulting Engineers to such effect, the form of which certificate is attached hereto as Exhibit A;

(d) The Governmental Agency shall have obtained all permits required by the laws of the State and the federal government necessary for the construction of the Project, and the Authority and the Council shall have received a certificate of the Consulting Engineers to such effect;

(e) The Governmental Agency shall have obtained all requisite orders of and approvals from the Public Service Commission of West Virginia (the "PSC") and the Council necessary for the construction of the Project and operation of the System, with all requisite appeal periods having expired without successful appeal, and the Authority and the Council shall have received an opinion of counsel to the Governmental Agency, which may be local counsel to the Governmental Agency, bond counsel or special PSC counsel but must be satisfactory to the Authority and the Council, to such effect;

(f) The Governmental Agency shall have obtained any and all approvals for the issuance of the Local Bonds required by State law, and the Authority and the Council shall have received an opinion of counsel to the Governmental Agency, which

may be local counsel to the Governmental Agency, bond counsel or special PSC counsel but must be satisfactory to the Authority, to such effect;

(g) The Governmental Agency shall have obtained any and all approvals of rates and charges required by State law and shall have taken any other action required to establish and impose such rates and charges (imposition of such rates and charges is not, however, required to be effective until completion of construction of the Project), with all requisite appeal periods having expired without successful appeal, and the Authority and the Council shall have received an opinion of counsel to the Governmental Agency, which may be local counsel to the Governmental Agency, bond counsel or special PSC counsel but must be satisfactory to the Authority and the Council, to such effect;

(h) Such rates and charges for the System shall be sufficient to comply with the provisions of Subsections 4.1(a) and 4.1(b)(ii) hereof, and the Authority and the Council shall have received a certificate of the accountant for the Governmental Agency, or such other person or firm experienced in the finances of governmental agencies and satisfactory to the Authority and the Council, to such effect; and

(i) The net proceeds of the Local Bonds, together with all moneys on deposit or to be simultaneously deposited (or, with respect to proceeds of grant anticipation notes or other indebtedness for which a binding purchase contract has been entered, to be deposited on a date certain) and irrevocably pledged thereto and the proceeds of grants irrevocably committed therefor, shall be sufficient to pay the costs of construction and acquisition of the Project as set forth in the Application, and the Authority shall have received a certificate of the Consulting Engineers, or such other person or firm experienced in the financing of projects and satisfactory to the Authority and the Council, to such effect, such certificate to be in form and substance satisfactory to the Authority and the Council, and evidence satisfactory to the Authority and the Council of such irrevocably committed grants.

3.2 Subject to the terms and provisions of this Loan Agreement, the rules and regulations promulgated by the Authority, the Council or any other appropriate State agency and any applicable rules, regulations and procedures promulgated from time to time by the federal government, it is hereby agreed that the Authority shall make the Loan to the Governmental Agency and the Governmental Agency shall accept the Loan from the Authority, and in furtherance thereof it is agreed that the Governmental Agency shall sell to the Authority and the Authority shall make the Loan by purchasing the Local Bonds in the principal amount and at the price set forth in Schedule X hereto. The Local Bonds shall have such further terms and provisions as described in Article IV hereof.

3.3 The Loan shall be secured and shall be repaid in the manner hereinafter provided in this Loan Agreement.

3.4 The Local Bonds shall be delivered to the Authority, at the offices of the Authority, on a date designated by the Governmental Agency by written notice to the

Authority, which written notice shall be given not less than ten (10) business days prior to the date designated; provided, however, that if the Authority is unable to accept delivery on the date designated, the Local Bonds shall be delivered to the Authority on a date as close as possible to the designated date and mutually agreeable to the Authority, the Council and the Governmental Agency. The date of delivery so designated or agreed upon is hereinafter referred to as the "Date of Loan Closing." Notwithstanding the foregoing, the Date of Loan Closing shall in no event occur more than ninety (90) days after the date of execution of this Loan Agreement by the Authority or such later date as is agreed to in writing by the Council.

3.5 The Governmental Agency understands and acknowledges that it is one of several governmental agencies which have applied to the Council for loans from the Infrastructure Fund to finance projects and that the obligation of the Authority to make any such loan is subject to the Council's authorization and the Governmental Agency's fulfilling all of the terms and conditions of this Loan Agreement on or prior to the Date of Loan Closing. The Governmental Agency specifically recognizes that the Authority will not purchase the Local Bonds unless and until sufficient funds are available in the Infrastructure Fund to purchase all the Local Bonds and that, prior to execution of this Loan Agreement, the Authority may commit to and purchase the revenue bonds of other governmental agencies for which it has sufficient funds available.

ARTICLE IV

Local Bonds; Security for Loan; Repayment of Loan; Interest on Loan; Fees and Charges

4.1 The Governmental Agency shall, as one of the conditions of the Authority to make the Loan, authorize the issuance of and issue the Local Bonds pursuant to an official action of the Governmental Agency in accordance with the Local Statute, which shall, as adopted or enacted, contain provisions and covenants in substantially the form as follows, unless the specific provision or covenant is modified or waived by the Council:

(a) That the gross revenues of the System shall always be used for purposes of the System. Such gross revenues shall be used monthly, in the order of priority listed below:

(i) to pay Operating Expenses of the System;

(ii) to the extent not otherwise limited by any outstanding loan resolution, indenture or other act or document and beginning on the date set forth in Schedule X, to provide debt service on the Local Bonds by depositing in a sinking fund one-third (1/3) of the interest payment next coming due on the Local Bonds and one-third (1/3) of the principal payment next coming due on the Local Bonds and, beginning three (3) months prior

to the first date of payment of principal of the Local Bonds, if the reserve account for the Local Bonds (the "Reserve Account") was not funded from proceeds of the Local Bonds or otherwise concurrently with the issuance thereof (which, with an approving opinion of bond counsel to the Governmental Agency, may be with a letter of credit or surety) in an amount equal to the maximum amount of principal and interest which will come due on the Local Bonds in the then current or any succeeding year (the "Reserve Requirement"), by depositing in the Reserve Account an amount not less than one-twelfth (1/12) of one-tenth (1/10) of the Reserve Requirement or, if the Reserve Account has been so funded (whether by Local Bond proceeds, monthly deposits or otherwise), any amount necessary to maintain the Reserve Account at the Reserve Requirement;

(iii) to create a renewal and replacement, or similar, fund in an amount equal to two and one-half percent (2-1/2%) of the gross revenues from the System, exclusive of any payments into the Reserve Account, for the purpose of improving or making emergency repairs or replacements to the System or eliminating any deficiencies in the Reserve Account; and

(iv) for other legal purposes of the System, including payment of debt service on other obligations junior, subordinate and inferior to the Local Bonds.

Provided, that if the Governmental Agency has existing outstanding indebtedness which has greater coverage or renewal and replacement fund requirements, then the greater requirements will prevail until said existing indebtedness is paid in full.

(b) Covenants substantially as follows:

(i) That the Local Bonds shall be secured by a pledge of either the gross or net revenues of the System, as more fully set forth in Schedule X attached hereto and in the Local Act;

(ii) That the schedule of rates or charges for the services of the System shall be sufficient to provide funds which, along with other revenues of the System, will pay all Operating Expenses and leave a balance each year equal to at least one hundred fifteen percent (115%) of the maximum amount required in any year for debt service on the Local Bonds and all other obligations secured by a lien on or payable from the revenues of the System prior to or on a parity with the Local Bonds or, if the Reserve Account is funded (whether by Local Bond proceeds, monthly deposits or otherwise) at an amount equal to the Reserve Requirement and any reserve account for any such prior or parity obligations is funded at least at the requirement therefor, equal to at least one hundred ten percent (110%) of the maximum amount required in any year for debt service on the Local Bonds and any such prior or parity obligations;

(iii) That the Governmental Agency shall complete the Project and operate and maintain the System in good condition;

(iv) That, except as otherwise required by State law or with the written consent of the Council and the Authority, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to pay fully all the Local Bonds outstanding, with further restrictions on the disposition of portions of the System as are normally contained in such covenants;

(v) That the Governmental Agency shall not issue any other obligations payable from the revenues of the System which rank prior to, or equally, as to lien and security with the Local Bonds, except parity bonds which shall only be issued if net revenues of the System prior to issuance of such parity bonds, plus reasonably projected revenues from rate increases and the improvements to be financed by such parity bonds, shall not be less than one hundred fifteen percent (115%) of the maximum debt service in any succeeding year on all Local Bonds and parity bonds theretofore and then being issued and on any obligations secured by a lien on or payable from the revenues of the System prior to the Local Bonds and with the prior written consent of the Authority and the Council; provided, however, that additional parity bonds may be issued to complete the Project, as described in the Application as of the date hereof, without regard to the foregoing;

(vi) That the Governmental Agency will carry such insurance as is customarily carried with respect to works and properties similar to the System, including those specified by Section 2.8 hereof;

(vii) That the Governmental Agency will not render any free services of the System;

(viii) That the Authority may, by proper legal action, compel the performance of the duties of the Governmental Agency under the Local Act, including the making and collection of sufficient rates or charges for services rendered by the System, and shall also have, in the event of a default in payment of principal of or interest on the Local Bonds, the right to obtain the appointment of a receiver to administer the System or construction of the Project, or both, as provided by law;

(ix) That, to the extent authorized by the laws of the State and the rules and regulations of the PSC, all delinquent rates and charges, if not paid when due, shall become a lien on the premises served by the System;

(x) That, to the extent legally allowable, the Governmental Agency will not grant any franchise to provide any services which would compete with the System;

(xi) That the Governmental Agency shall annually cause the records of the System to be audited by an independent certified public accountant or independent public accountant and shall submit the report of said audit to the Authority and

the Council, which report shall include a statement that notes whether the results of tests disclosed instances of noncompliance that are required to be reported under government auditing standards and, if they are, describes the instances of noncompliance and the audited financial statements shall include a statement that notes whether the Governmental Agency's revenues are adequate to meet its Operating Expenses and debt service and reserve requirements;

(xii) That the Governmental Agency shall annually adopt a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding fiscal year and shall submit a copy of such budget to the Authority and the Council within 30 days of adoption thereof;

(xiii) That, to the extent authorized by the laws of the State and the rules and regulations of the PSC, prospective users of the System shall be required to connect thereto;

(xiv) That the proceeds of the Local Bonds, advanced from time to time, must (a) be deposited in a construction fund, which, except as otherwise agreed to in writing by the Authority, shall be held separate and apart from all other funds of the Governmental Agency and on which the owners of the Local Bonds shall have a lien until such proceeds are applied to the construction of the Project (including the repayment of any incidental interim financing) and/or (b) be used to pay (or redeem) bond anticipation notes or other interim financing of such Governmental Agency, the proceeds of which were used to finance the construction of the Project; provided that, with the prior written consent of the Authority and the Council, the proceeds of the Local Bonds may be used to fund all or a portion of the Reserve Account, on which the owner of the Local Bonds shall have a lien as provided herein;

(xv) That, as long as the Authority is the owner of any of the Local Bonds, the Governmental Agency may not redeem any Local Bonds by it without the written consent of the Authority and the Council and otherwise in compliance with this Loan Agreement;

(xvi) That the West Virginia Municipal Bond Commission (the "Commission") shall serve as paying agent for the Local Bonds;

(xvii) That the Governmental Agency shall on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the required interest, principal and reserve account payment. The Governmental Agency shall complete the Monthly Payment Form, attached hereto as Exhibit D and incorporated herein by reference, and submit a copy of said form along with a copy of the check or electronic transfer to the Authority by the 5th day of such calendar month;

(xviii) That, unless it qualifies for an exception to the provisions of Section 148 of the Internal Revenue Code of 1986, as amended, which exception shall be set forth in an opinion of bond counsel, the Governmental Agency will furnish to the Authority, annually, at such time as it is required to perform its rebate calculations under the Internal Revenue Code of 1986, as amended, a certificate with respect to its rebate calculations and, at any time, any additional information requested by the Authority;

(xix) That the Governmental Agency shall take any and all action, or shall refrain from taking any action regarding the use of the proceeds of the Local Bonds, as shall be deemed necessary by the Authority to maintain the exclusion from gross income for federal income tax purposes of interest on the State's general obligation bonds or any bonds secured by the Local Bonds;

(xx) That the Governmental Agency shall have obtained the certificate of the Consulting Engineer in the form attached hereto as Exhibit A, to the effect that the Project has been or will be constructed in accordance with the approved plans, specifications and design as submitted to the Authority and the Council, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and the Council is sufficient to pay the costs of acquisition and construction of the Project and all permits required by federal and State laws for construction of the Project have been obtained;

(xxi) That the Governmental Agency shall, to the full extent permitted by applicable law and the rules and regulations of the PSC, terminate the services of any water facility owned by it to any customer of the System who is delinquent in payment of charges for services provided by the System and will not restore the services of the water facility until all delinquent charges for the services of the System have been fully paid or, if the water facility is not owned by the Governmental Agency, then the Governmental Agency shall enter into a termination agreement with the water provider;

(xxii) That the Governmental Agency shall furnish to the Authority such information with respect to earnings on all funds constituting "gross proceeds" of the Local Bonds (as that term is defined in the Internal Revenue Code of 1986, as amended) from time to time as the Authority may request;

(xxiii) That the Governmental Agency shall submit all proposed change orders to the Council for written approval. The Governmental Agency shall obtain the written approval of the Council before expending any proceeds of the Local Bonds held in "contingency" as set forth in the final Schedule B attached to the certificate of the Consulting Engineer. The Governmental Agency shall obtain the written approval of the Council before expending any proceeds of the Local Bonds available due to bid/construction/project underruns;

(xxiv) That the Governmental Agency shall list the funding provided by the Authority and the Council in any press release, publication, program bulletin, sign or other public communication that references the Project, including but not limited to any program document distributed in conjunction with any groundbreaking or dedication of the Project; and

(xxv) That, unless it qualifies for an exception, the Governmental Agency shall comply with all the requirements of Chapter 21, Article 1C of the Code of West Virginia, 1931, as amended (the "West Virginia Jobs Act") and shall require its contractors and subcontractors to comply with the West Virginia Jobs Act. The Governmental Agency shall provide the Council and the Authority with a certificate stating that (I) the Governmental Agency will comply with all the requirements of the West Virginia Jobs Act; (II) the Governmental Agency has included the provisions of the West Virginia Jobs Act in each contract and subcontract for the Project; (III) the Governmental Agency has received or will receive, prior to entering into contracts or subcontracts, from each contractor or subcontractor a certificate demonstrating compliance with Section 4 of the West Virginia Jobs Act or waiver certificates from the West Virginia Division of Labor ("DOL"); and (IV) the Governmental Agency will file with the DOL and the Council copies of the waiver certificates and certified payrolls or comparable documents that include the number of employees, the county and state wherein the employees reside and their occupation, following the procedures established by the DOL. The monthly requisitions submitted to the Council shall also certify that the Governmental Agency is monitoring compliance by its contractors and subcontractors and that the required information has been submitted.

The Governmental Agency hereby represents and warrants that the Local Act has been or shall be duly adopted in compliance with all necessary corporate and other action and in accordance with applicable provisions of law. All legal matters incident to the authorization, issuance, validity, sale and delivery of the Local Bonds shall be approved without qualification by recognized bond counsel acceptable to the Authority in substantially the form of legal opinion attached hereto as Exhibit B.

4.2 The Loan shall be secured by the pledge and assignment by the Governmental Agency, as effected by the Local Act, of the fees, charges and other revenues of the Governmental Agency from the System as further set forth by and subject only to such reservations and exceptions as are described in Schedules X and Y hereto or are otherwise expressly permitted in writing by the Authority and the Council.

4.3 The principal of the Loan shall be repaid by the Governmental Agency on the days and in the years provided in Schedule X hereto. Interest payments on the Loan shall be made by the Governmental Agency on a quarterly basis as provided in said Schedule X.

4.4 The Loan shall bear interest from the date and at the rate or rates per annum set forth on Schedule X hereto. In no event shall the interest rate on or the net interest cost of the Local Bonds exceed any statutory limitation with regard thereto.

4.5 The Local Bonds shall be delivered to the Authority in fully registered form, transferable and exchangeable as provided in the Local Act at the expense of the Governmental Agency. Anything to the contrary herein notwithstanding, the Local Bonds may be issued in one or more series, as reflected by Schedule X hereto.

4.6 The Governmental Agency agrees to expend the net proceeds of the Local Bonds for the Project within 3 years of the issuance of the bonds which are the source of money used to purchase the Local Bonds, unless otherwise agreed to by the Council.

ARTICLE V

Certain Covenants of the Governmental Agency; Imposition and Collection of User Charges; Payments To Be Made by Governmental Agency to the Authority

5.1 The Governmental Agency hereby irrevocably covenants and agrees to comply with all of the terms, conditions and requirements of this Loan Agreement and the Local Act. The Governmental Agency hereby further irrevocably covenants and agrees that, as one of the conditions of the Authority to make the Loan, it has fixed and collected, or will fix and collect, the rates, fees and other charges for the use of the System and will take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Local Act and in compliance with the provisions of Subsections 4.1(a) and 4.1(b)(ii) hereof.

5.2 In the event, for any reason, the schedule of rates, fees and charges initially established for the System in connection with the Local Bonds shall prove to be insufficient to produce the required sums set forth in the Local Act and this Loan Agreement, the Governmental Agency hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges (or where applicable, immediately file with the PSC for a rate increase) and take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Local Act and this Loan Agreement.

5.3 In the event the Governmental Agency defaults in the payment due to the Authority pursuant to this Loan Agreement, the amount of such default shall bear interest at the interest rate of the installment of the Loan next due, from the date of the default until the date of the payment thereof.

5.4 The Governmental Agency hereby irrevocably covenants and agrees with the Authority that, in the event of any default hereunder by the Governmental Agency, the Authority may exercise any or all of the rights and powers granted under the Act and State law, including, without limitation, the right to an appointment of a receiver.

ARTICLE VI

Other Agreements of the Governmental Agency

6.1 The Governmental Agency hereby warrants and represents that all information provided to the Authority and the Council in this Loan Agreement, in the Application or in any other application or documentation with respect to financing the Project was at the time, and now is, true, correct and complete, and such information does not omit any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. Prior to the Authority's making the Loan and receiving the Local Bonds, the Authority and the Council shall have the right to cancel all or any of their obligations under this Loan Agreement if (a) any representation made to the Authority and the Council by the Governmental Agency in connection with the Loan shall be incorrect or incomplete in any material respect or (b) the Governmental Agency has violated any commitment made by it in its Application or in any supporting documentation or has violated any of the terms of the Act or this Loan Agreement.

6.2 The Governmental Agency hereby covenants that it will rebate any amounts required by Section 148 of the Internal Revenue Code of 1986, as amended, and will take all steps necessary to make any such rebates. In the event the Governmental Agency fails to make any such rebates as required, then the Governmental Agency shall pay any and all penalties, obtain a waiver from the Internal Revenue Service and take any other actions necessary or desirable to preserve the exclusion from gross income for federal income tax purposes of interest on the Local Bonds.

6.3 Notwithstanding Section 6.2, the Authority may at any time, in its sole discretion, cause the rebate calculations prepared by or on behalf of the Governmental Agency to be monitored or cause the rebate calculations for the Governmental Agency to be prepared, in either case at the expense of the Governmental Agency.

6.4 The Governmental Agency hereby agrees to give the Authority and the Council prior written notice of the issuance by it of any other obligations to be used for the System, payable from the revenues of the System or from any grants for the Project or otherwise related to the Project or the System.

6.5 The Governmental Agency hereby agrees to file with the Authority and the Council upon completion of acquisition and construction of the Project a schedule in

substantially the form of Amended Schedule B to the Application, setting forth the actual costs of the Project and sources of funds therefor.

ARTICLE VII

Miscellaneous

7.1 Additional definitions, additional terms and provisions of the Loan and additional covenants and agreements of the Governmental Agency, if any, may be set forth in Schedule Z attached hereto and incorporated herein by reference, with the same effect as if contained in the text of this Loan Agreement.

7.2 Schedules X and Y shall be attached to this Loan Agreement by the Authority as soon as practicable after the Date of Loan Closing is established and shall be approved by an official action of the Governmental Agency supplementing the Local Act, a certified copy of which official action shall be submitted to the Authority and the Council.

7.3 The Authority shall take all actions required by the Council in making and enforcing this Loan Agreement.

7.4 If any provision of this Loan Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Loan Agreement, and this Loan Agreement shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

7.5 This Loan Agreement may be executed in one or more counterparts, any of which shall be regarded for all purposes as an original and all of which constitute but one and the same instrument. Each party agrees that it will execute any and all documents or other instruments and take such other actions as may be necessary to give effect to the terms of this Loan Agreement.

7.6 No waiver by either party of any term or condition of this Loan Agreement shall be deemed or construed as a waiver of any other terms or conditions, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different section, subsection, paragraph, clause, phrase or other provision of this Loan Agreement.

7.7 This Loan Agreement supersedes all prior negotiations, representations and agreements between the parties hereto relating to the Loan and constitutes the entire agreement between the parties hereto in respect thereof.

7.8 The Authority acknowledges that certain terms and requirements in this Loan Agreement may not be applicable when the Project is financed in part by the West Virginia Department of Environmental Protection, Office of Abandoned Mine Lands and under that circumstance those terms and requirements are specifically waived or modified as agreed to by the Authority and set forth in the Local Act.

7.9 By execution and delivery of this Loan Agreement, notwithstanding the date hereof, the Governmental Agency specifically recognizes that it is hereby agreeing to sell its Local Bonds to the Authority and that such obligation may be specifically enforced or subject to a similar equitable remedy by the Authority.

7.10 This Loan Agreement shall terminate upon the earlier of:


- (i) the end of ninety (90) days after the date of execution hereof by the Authority or such later date as is agreed to in writing by the Council if the Governmental Agency has failed to deliver the Local Bonds to the Authority;
- (ii) termination by the Authority and the Council pursuant to Section 6.1 hereof; or
- (iii) payment in full of the principal of and interest on the Loan and of any fees and charges owed by the Governmental Agency to the Authority, acting on behalf of the Council.

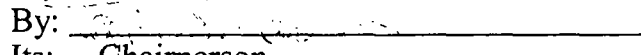
IN WITNESS WHEREOF, the parties hereto have caused this Loan Agreement to be executed by their respective duly authorized officers as of the date executed below by the Authority.

LUBECK PUBLIC SERVICE DISTRICT

(SEAL)

Attest:


Its: Secretary

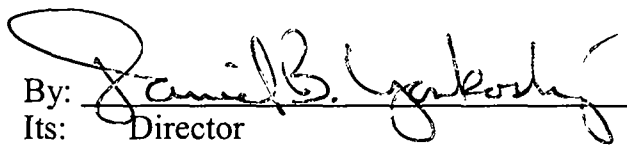
By: 
Its: Chairperson
Date: September 27, 2005

WEST VIRGINIA WATER
DEVELOPMENT AUTHORITY

(SEAL)

Attest:


Its: Secretary-Treasurer

By: 
Its: Director
Date: September 27, 2005

017542/00301
09/02/05

EXHIBIT A

FORM OF CERTIFICATE OF CONSULTING ENGINEER

(Issuer)

(Name of Bonds)

I, _____, Registered Professional Engineer, West Virginia License No. _____, of _____, Consulting Engineers, _____, hereby certify as follows:

1. My firm is engineer for the acquisition and construction of _____ to the _____ system (the "Project") of _____ (the "Issuer"), to be constructed primarily in _____ County, West Virginia, which acquisition and construction are being permanently financed in part by the above-captioned bonds (the "Bonds") of the Issuer. Capitalized words not defined herein shall have the same meanings set forth in the bond _____ adopted or enacted by the Issuer on _____, and the Loan Agreement by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), dated _____.

2. The Bonds are being issued for the purposes of (i) _____, and (ii) paying certain issuance and other costs in connection therewith.

3. To the best of my knowledge, information and belief, (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in general accordance with the approved plans, specifications and designs prepared by my firm and approved by [DEP/BPH/PSC] and any change orders approved by the Issuer, the Council and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least _____ years if properly operated and maintained, excepting anticipated replacements due to normal wear and tear; (iii) the Issuer has received bids for the acquisition and construction of the Project which are in an amount and otherwise compatible with the plan of financing

set forth in the Schedule B attached hereto as Exhibit A and my firm¹ has ascertained that all successful bidders have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified for accuracy; (iv) the successful bidders received any and all addenda to the original bid documents; (v) the bid documents relating to the Project reflect the Project as approved by the [DEP/BPH/PSC] and the bid forms provided to the bidders contain all critical operational components of the Project; (vi) the successful bids include prices for every item on such bid forms; (vii) the uniform bid procedures were followed; (viii) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project and operation of the System; (ix) as of the effective date thereof, ²the rates and charges for the System as adopted by the Issuer will be sufficient to comply with the provisions of the Loan Agreement; (x) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project set forth in the Schedule B attached hereto and approved by the Council; and (xi) attached hereto as Exhibit A is the final amended "Schedule B - Final Total Cost of Project, Sources of Funds and Costs of Financing" for the Project.

WITNESS my signature and seal on this ____ day of _____, ____.

[SEAL]

By: _____
West Virginia License No. _____

¹If another responsible party, such as the Issuer's attorney, reviews the insurance and payment bonds, then insert the following: [and in reliance upon the opinion of _____, Esq.] and delete "my firm has ascertained that".

²If the Rule 42 Exhibit and/or rate structure was prepared by an accountant, then insert the following: "In reliance upon the certificate of _____ of even date herewith," at the beginning of (ix).

EXHIBIT B

OPINION OF BOND COUNSEL FOR GOVERNMENTAL AGENCY

[To Be Dated as of Date of Loan Closing]

West Virginia Infrastructure and
Jobs Development Council
300 Summers Street, Suite 980
Charleston, West Virginia 25301

West Virginia Water Development Authority
180 Association Drive
Charleston, West Virginia 25311

Ladies and Gentlemen:

We are bond counsel to _____ (the
"Governmental Agency"), a _____.

We have examined a certified copy of proceedings and other papers relating to the authorization of (i) a loan agreement dated _____, _____, including all schedules and exhibits attached thereto (the "Loan Agreement"), between the Governmental Agency and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), and (ii) the issue of a series of revenue bonds of the Governmental Agency, dated _____, _____ (the "Local Bonds"), to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Local Bonds are issued in the principal amount of \$_____, in the form of one bond, registered as to principal and interest to the Authority, with interest and principal payable quarterly on March 1, June 1, September 1 and December 1 of each year, beginning _____, 1, _____, and ending _____, 1, _____, as set forth in the "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Local Bonds.

The Local Bonds are issued for the purposes of (i) _____, and
(ii) paying certain issuance and other costs in connection therewith.

We have also examined the applicable provisions of _____ of the Code of West Virginia, 1931, as amended (the "Local Statute"), and the bond _____ duly adopted or enacted by the Governmental Agency on _____, as supplemented by the supplemental resolution duly adopted by the Governmental Agency on _____ (collectively, the "Local Act"), pursuant to and under which Local Statute and Local Act the Local Bonds are authorized and issued, and the Loan Agreement has been undertaken. The Local Bonds are subject to redemption prior

to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Local Act and the Loan Agreement.

Based upon the foregoing and upon our examination of such other documents as we have deemed necessary, we are of the opinion as follows:

1. The Loan Agreement has been duly authorized by and executed on behalf of the Governmental Agency and is a valid and binding special obligation of the Governmental Agency, enforceable in accordance with the terms thereof.

2. The Loan Agreement inures to the benefit of the Authority and the Council and cannot be amended so as to affect adversely the rights of the Authority or the Council or diminish the obligations of the Governmental Agency without the consent of the Authority and the Council.

3. The Governmental Agency is a duly organized and validly existing _____, with full power and authority to acquire and construct the Project, to operate and maintain the System, to adopt or enact the Local Act and to issue and sell the Local Bonds, all under the Local Statute and other applicable provisions of law.

4. The Local Act and all other necessary orders and resolutions have been legally and effectively adopted or enacted by the Governmental Agency and constitute valid and binding obligations of the Governmental Agency, enforceable against the Governmental Agency in accordance with their terms. The Local Act contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

5. The Local Bonds have been duly authorized, issued, executed and delivered by the Governmental Agency to the Authority and are valid, legally enforceable and binding special obligations of the Governmental Agency, payable from the net or gross revenues of the System set forth in the Local Act and secured by a first lien on and pledge of the net or gross revenues of the System, all in accordance with the terms of the Local Bonds and the Local Act.

6. The Local Bonds are, by statute, exempt _____, and under existing statutes and court decisions of the United States of America, as presently written and applied, the interest on the Local Bonds is excludable from the gross income of the recipients thereof for federal income tax purposes.

No opinion is given herein as to the effect upon enforceability of the Local Bonds of bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights or in the exercise of judicial discretion in appropriate cases.

We have examined the executed and authenticated Local Bond numbered R-1, and in our opinion the form of said bond and its execution and authentication are regular and proper.

Very truly yours,

-22-

EXHIBIT C

MONTHLY FINANCIAL REPORT

Name of Governmental Agency _____
 Name of Bond Issue(s) _____
 Type of Project _____ Water _____ Wastewater _____
 Fiscal Year _____ Report Month _____

<u>Item</u>	<u>Current Month</u>	<u>Total Year To Date</u>	<u>Budget Year To Date</u>	<u>Budget Year To Date Minus Total Year To Date</u>
1. Gross Revenues	_____	_____	_____	_____
2. Operating Expenses	_____	_____	_____	_____
3. Bond Payments:				
<u>Type of Issue</u>				
Clean Water SRF	_____	_____	_____	_____
Drinking Water TRF	_____	_____	_____	_____
Infrastructure Fund	_____	_____	_____	_____
Water Development	_____	_____	_____	_____
Authority				
Rural Utilities Service	_____	_____	_____	_____
Economic Development	_____	_____	_____	_____
Administration	_____	_____	_____	_____
Other (Identify)	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
4. Renewal and Replacement Fund Deposits	_____	_____	_____	_____

 Name of Person Completing Form

 Address

 Telephone

INSTRUCTIONS FOR COMPLETING MONTHLY FINANCIAL REPORT

- Item 1 You will need a copy of the current fiscal year budget adopted by the Governmental Agency to complete Items 1 and 2. In Item 1, provide the amount of actual **Gross Revenues** for the current month and the total amount year-to-date in the respective columns. Divide the budgeted annual Gross Revenues by 12. For example, if Gross Revenues of \$1,200 are anticipated to be received for the year, each month the base would be increased by \$100 ($\$1,200/12$). This is the incremental amount for the Budget Year-to-Date column.
- Item 2 Provide the amount of actual **Operating Expenses** for the current month and the total amount year-to-date in the respective columns. Any administrative fee should be included in the Operating Expenses. Divide the budgeted annual Operating Expenses by 12. For example, if Operating Expenses of \$900 are anticipated to be incurred for the year, each month the base would be increased by \$75 ($\$900/12$). This is the incremental amount for the Budget Year-to-Date column.
- Item 3 Provide the **Bond Payments (principal, interest and reserve account)** for all the outstanding bonds of the Governmental Agency according to the source of funding. For example, Clean Water State Revolving Fund loan from Department of Environmental Protection, Drinking Water Treatment Revolving Fund loan from Bureau for Public Health, Infrastructure Fund loan from Infrastructure and Jobs Development Council, or a loan from the Water Development Authority, etc.
- Item 4 Provide the amount deposited into the **Renewal and Replacement Fund** each month. This amount is equal to 2.5% of Gross Revenues minus the total reserve account payments included in Item 3. If Gross Revenues are \$1,200, then \$30 (2.5% of \$1,200), LESS the amount of all reserve account payments in Item 3 should be deposited into the Renewal and Replacement Fund. The money in the Renewal and Replacement Fund should be kept separate and apart from all other funds of the Governmental Agency.

The Governmental Agency must complete the Monthly Financial Report and forward it to the Water Development Authority by the 10th day of each month, commencing on the date contracts are executed for the acquisition or construction of the Project and for two years following the completion of acquisition or construction of the Project.

EXHIBIT D

MONTHLY PAYMENT FORM

West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311

Re: [Name of bond issue]

Ladies and Gentlemen:

The following deposits were made to the West Virginia Municipal Bond Commission on behalf of [Name of Governmental Agency] on [Date].

Sinking Fund:

Interest \$_____

Principal \$_____

Total: \$_____

Reserve Account: \$_____

Witness my signature this ____ day of_____.

[Name of Governmental Agency]

By: _____
Authorized Officer

Enclosure: copy of check(s)

SCHEDULE X

DESCRIPTION OF LOCAL BONDS

Principal Amount of Local Bonds \$7,879,443

Purchase Price of Local Bonds \$7,879,443

The Local Bonds shall bear no interest. Commencing June 1, 2021, principal of the Local Bonds is payable quarterly. Quarterly payments will be made on March 1, June 1, September 1 and December 1 of each year as set forth on the Schedule Y attached hereto and incorporated herein by reference.

The Governmental Agency shall submit its payments monthly to the Commission which will make quarterly payments to the Authority at such address as is given to the Commission in writing by the Authority.

The Local Bonds are fully registered in the name of the Authority as to interest, if any, and principal and the Local Bonds shall grant the Authority a first lien on the gross or net revenues of the Governmental Agency's system as provided in the Local Act.

The Governmental Agency may prepay the Local Bonds in full at any time at the price of par but only with the Council's written consent. The Governmental Agency shall request approval from the Authority and Council in writing of any proposed debt which will be issued by the Governmental Agency on a parity with the Local Bonds which request must be filed at least 60 days prior to the intended date of issuance.

As of the date of the Loan Agreement, the Local Bonds are on a parity as to liens, pledge and source of and security for payment with the following obligations of the Governmental Agency:

1. Sewerage System Revenue Bonds, Series 1999 A (West Virginia SRF Program), dated March 9, 1999, issued in the principal amount of \$7,950,000.
2. Sewerage System Revenue Bonds, Series 1999 B (West Virginia Infrastructure Fund), dated March 9, 1999, issued in the principal amount of \$2,000,000.
3. Sewer Revenue Bonds, Series 2005 B (West Virginia Infrastructure Fund), dated September 27, 2005, issued in the principal amount of \$2,411,178.

SCHEDULE Y

\$7,879,443

Lubeck Public Service District

0% Interest Rate

Closing Date: September 27, 2005

Debt Service Schedule

Part 1 of 4

Date	Principal	Coupon	Total P+I
12/01/2005	-	-	-
03/01/2006	-	-	-
06/01/2006	-	-	-
09/01/2006	-	-	-
12/01/2006	-	-	-
03/01/2007	-	-	-
06/01/2007	-	-	-
09/01/2007	-	-	-
12/01/2007	-	-	-
03/01/2008	-	-	-
06/01/2008	-	-	-
09/01/2008	-	-	-
12/01/2008	-	-	-
03/01/2009	-	-	-
06/01/2009	-	-	-
09/01/2009	-	-	-
12/01/2009	-	-	-
03/01/2010	-	-	-
06/01/2010	-	-	-
09/01/2010	-	-	-
12/01/2010	-	-	-
03/01/2011	-	-	-
06/01/2011	-	-	-
09/01/2011	-	-	-
12/01/2011	-	-	-
03/01/2012	-	-	-
06/01/2012	-	-	-
09/01/2012	-	-	-
12/01/2012	-	-	-
03/01/2013	-	-	-
06/01/2013	-	-	-
09/01/2013	-	-	-
12/01/2013	-	-	-
03/01/2014	-	-	-
06/01/2014	-	-	-
09/01/2014	-	-	-
12/01/2014	-	-	-
03/01/2015	-	-	-
06/01/2015	-	-	-
09/01/2015	-	-	-
12/01/2015	-	-	-
03/01/2016	-	-	-
06/01/2016	-	-	-
09/01/2016	-	-	-

IF 08-31-05 | SINGLE PURPOSE | 9/1/2005 | 11:46 AM

Ferris, Baker Watts, Inc.
West Virginia Public Finance Office

\$7,879,443

Lubeck Public Service District

0% Interest Rate

Closing Date: September 27, 2005

Debt Service Schedule

Part 2 of 4

Date	Principal	Coupon	Total P+I
12/01/2016	-	-	-
03/01/2017	-	-	-
06/01/2017	-	-	-
09/01/2017	-	-	-
12/01/2017	-	-	-
03/01/2018	-	-	-
06/01/2018	-	-	-
09/01/2018	-	-	-
12/01/2018	-	-	-
03/01/2019	-	-	-
06/01/2019	-	-	-
09/01/2019	-	-	-
12/01/2019	-	-	-
03/01/2020	-	-	-
06/01/2020	-	-	-
09/01/2020	-	-	-
12/01/2020	-	-	-
03/01/2021	-	-	-
06/01/2021	109,436.71	-	109,436.71
09/01/2021	109,436.71	-	109,436.71
12/01/2021	109,436.71	-	109,436.71
03/01/2022	109,436.71	-	109,436.71
06/01/2022	109,436.71	-	109,436.71
09/01/2022	109,436.71	-	109,436.71
12/01/2022	109,436.71	-	109,436.71
03/01/2023	109,436.71	-	109,436.71
06/01/2023	109,436.71	-	109,436.71
09/01/2023	109,436.71	-	109,436.71
12/01/2023	109,436.71	-	109,436.71
03/01/2024	109,436.71	-	109,436.71
06/01/2024	109,436.71	-	109,436.71
09/01/2024	109,436.71	-	109,436.71
12/01/2024	109,436.71	-	109,436.71
03/01/2025	109,436.71	-	109,436.71
06/01/2025	109,436.71	-	109,436.71
09/01/2025	109,436.71	-	109,436.71
12/01/2025	109,436.71	-	109,436.71
03/01/2026	109,436.71	-	109,436.71
06/01/2026	109,436.71	-	109,436.71
09/01/2026	109,436.71	-	109,436.71
12/01/2026	109,436.71	-	109,436.71
03/01/2027	109,436.71	-	109,436.71
06/01/2027	109,436.71	-	109,436.71
09/01/2027	109,436.71	-	109,436.71

IF 08-31-05 | SINGLE PURPOSE | 9/1/2005 | 11:46 AM

Ferris, Baker Watts, Inc.
West Virginia Public Finance Office

\$7,879,443

Lubeck Public Service District

0% Interest Rate

Closing Date: September 27, 2005

Debt Service Schedule

Part 3 of 4

Date	Principal	Coupon	Total P+I
12/01/2027	109,436.71	-	109,436.71
03/01/2028	109,436.71	-	109,436.71
06/01/2028	109,436.71	-	109,436.71
09/01/2028	109,436.71	-	109,436.71
12/01/2028	109,436.71	-	109,436.71
03/01/2029	109,436.71	-	109,436.71
06/01/2029	109,436.71	-	109,436.71
09/01/2029	109,436.71	-	109,436.71
12/01/2029	109,436.71	-	109,436.71
03/01/2030	109,436.71	-	109,436.71
06/01/2030	109,436.71	-	109,436.71
09/01/2030	109,436.71	-	109,436.71
12/01/2030	109,436.71	-	109,436.71
03/01/2031	109,436.71	-	109,436.71
06/01/2031	109,436.71	-	109,436.71
09/01/2031	109,436.71	-	109,436.71
12/01/2031	109,436.71	-	109,436.71
03/01/2032	109,436.71	-	109,436.71
06/01/2032	109,436.71	-	109,436.71
09/01/2032	109,436.71	-	109,436.71
12/01/2032	109,436.71	-	109,436.71
03/01/2033	109,436.71	-	109,436.71
06/01/2033	109,436.71	-	109,436.71
09/01/2033	109,436.71	-	109,436.71
12/01/2033	109,436.71	-	109,436.71
03/01/2034	109,436.71	-	109,436.71
06/01/2034	109,436.71	-	109,436.71
09/01/2034	109,436.71	-	109,436.71
12/01/2034	109,436.71	-	109,436.71
03/01/2035	109,436.71	-	109,436.71
06/01/2035	109,436.71	-	109,436.71
09/01/2035	109,436.71	-	109,436.71
12/01/2035	109,436.71	-	109,436.71
03/01/2036	109,436.71	-	109,436.71
06/01/2036	109,436.70	-	109,436.70
09/01/2036	109,436.70	-	109,436.70
12/01/2036	109,436.70	-	109,436.70
03/01/2037	109,436.70	-	109,436.70
06/01/2037	109,436.70	-	109,436.70
09/01/2037	109,436.70	-	109,436.70
12/01/2037	109,436.70	-	109,436.70
03/01/2038	109,436.70	-	109,436.70
06/01/2038	109,436.70	-	109,436.70

IF 08-31-05 | SINGLE PURPOSE | 9/ 1/2005 | 11:46 AM

Ferris, Baker Watts, Inc.
West Virginia Public Finance Office

\$7,879,443

Lubeck Public Service District

0% Interest Rate

Closing Date: September 27, 2005

Debt Service Schedule

Part 4 of 4

Date	Principal	Coupon	Total P+I
09/01/2038	109,436.70	-	109,436.70
12/01/2038	109,436.70	-	109,436.70
03/01/2039	109,436.70	-	109,436.70
Total	\$7,879,443.00	-	\$7,879,443.00

Yield Statistics

Bond Year Dollars	\$193,462.21
Average Life	24.553 Years
Average Coupon	-
Net Interest Cost (NIC)	-
True Interest Cost (TIC)	4.72E-10
Bond Yield for Arbitrage Purposes	4.72E-10
All Inclusive Cost (AIC)	4.72E-10

IRS Form 8038

Net Interest Cost	-
Weighted Average Maturity	24.553 Years

SCHEDULE Z

None.

LOAN AGREEMENT

THIS LOAN AGREEMENT, made and entered into in several counterparts, by and between the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY, a governmental instrumentality and body corporate of the State of West Virginia (the "Authority"), acting on behalf of the WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL (the "Council"), and the governmental agency designated below (the "Governmental Agency").

LUBECK PUBLIC SERVICE DISTRICT
(Governmental Agency)

W I T N E S S E T H:

WHEREAS, pursuant to the provisions of Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended (the "Act"), the Authority is empowered upon request of the Council to make loans to governmental agencies for the acquisition or construction of projects by such governmental agencies, subject to such provisions and limitations as are contained in the Act;

WHEREAS, the Governmental Agency constitutes a governmental agency as defined by the Act;

WHEREAS, the Governmental Agency is authorized and empowered by the statutes of the State to acquire, construct, improve, operate and maintain a project, as defined by the Act, and to finance the cost of acquisition and construction of the same by borrowing money to be evidenced by revenue bonds issued by the Governmental Agency;

WHEREAS, the Governmental Agency intends to construct, is constructing or has constructed such a project at the location and as more particularly described and set forth in the Application, as hereinafter defined (the "Project");

WHEREAS, the Governmental Agency has completed and filed with the Authority an Application for a Construction Loan with attachments and exhibits and an Amended Application for a Construction Loan also with attachments and exhibits (together,

as further revised and supplemented, the "Application"), which Application is incorporated herein by this reference; and

WHEREAS, having reviewed the Application and made all findings required by the Act and having available sufficient funds therefor, the Council has authorized the Authority to lend the Governmental Agency the amount set forth on Schedule X attached hereto and incorporated herein by reference, through the purchase of revenue bonds of the Governmental Agency with money in the Infrastructure Fund, subject to the Governmental Agency's satisfaction of certain legal and other requirements of the Council's loan program (the "Program") as hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter contained, the Governmental Agency and the Authority hereby agree as follows:

ARTICLE I

Definitions

1.1 Except where the context clearly indicates otherwise, the terms "Authority," "cost," "Council," "governmental agency," "project," "waste water facility" and "water facility" have the definitions and meanings ascribed to them in the Act.

1.2 "Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser of the Bonds, acting in its administrative capacity pursuant to Section 10 of the Act and upon authorization from the Council.

1.3 "Consulting Engineers" means the professional engineer, licensed by the State, designated in the Application and any qualified successor thereto; provided, however, when a Loan is made for a Project financed, in part, by the Office of Abandoned Mine Lands, "Consulting Engineers" shall mean the West Virginia Department of Environmental Protection, or any successor thereto.

1.4 "Infrastructure Fund" means the West Virginia Infrastructure Fund established in accordance with Section 9 of the Act.

1.5 "Loan" means the loan to be made by the Authority to the Governmental Agency through the purchase of Local Bonds, as hereinafter defined, pursuant to this Loan Agreement.

1.6 "Local Act" means the official action of the Governmental Agency required by Section 4.1 hereof, authorizing the Local Bonds.

1.7 "Local Bonds" means the revenue bonds to be issued by the Governmental Agency pursuant to the provisions of the Local Statute, as hereinafter defined, to evidence the Loan and to be purchased by the Authority, all in accordance with the provisions of this Loan Agreement.

1.8 "Local Statute" means the specific provisions of the Code of West Virginia, 1931, as amended, pursuant to which the Local Bonds are issued.

1.9 "Operating Expenses" means the reasonable, proper and necessary costs of operation and maintenance of the System, as hereinafter defined, as should normally and regularly be included as such under generally accepted accounting principles.

1.10 "Project" means the project hereinabove referred to, to be constructed, being constructed or already constructed by the Governmental Agency in whole or in part with the net proceeds of the Local Bonds.

1.11 "System" means the project owned by the Governmental Agency, of which the Project constitutes all or to which the Project constitutes an improvement, and any improvements thereto hereafter constructed or acquired from any sources whatsoever.

1.12 Additional terms and phrases are defined in this Loan Agreement as they are used.

ARTICLE II

The Project and the System

2.1 The Project shall generally consist of the construction and acquisition of the facilities described in the Application, to be, being or having been constructed in accordance with plans, specifications and designs prepared for the Governmental Agency by the Consulting Engineers, the Authority and Council having found, to the extent applicable, that the Project is consistent with the Act.

2.2 Subject to the terms, conditions and provisions of this Loan Agreement and the Local Act, the Governmental Agency has acquired, or shall do all things necessary to acquire, the proposed site of the Project and shall do, is doing or has done all things necessary to construct the Project in accordance with the plans, specifications and designs prepared for the Governmental Agency by the Consulting Engineers.

2.3 All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Governmental Agency, subject to any mortgage lien or

other security interest as is provided for in the Local Statute unless a sale or transfer of all or a portion of said property or any interest therein is approved by the Authority and Council.

2.4 The Governmental Agency agrees that the Authority and the Council and their duly authorized agents shall have the right at all reasonable times to enter upon the Project site and Project facilities and to examine and inspect the same. The Governmental Agency further agrees that the Authority and the Council and their duly authorized agents and representatives shall, prior to, during and after completion of construction and commencement of operation of the Project, have such rights of access to the System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority and the Council with respect to the System pursuant to the pertinent provisions of the Act.

2.5 The Governmental Agency shall keep complete and accurate records of the cost of acquiring the Project site and the costs of constructing, acquiring and installing the Project. The Governmental Agency shall permit the Authority and the Council, acting by and through their directors or their duly authorized agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at any and all reasonable times for the purpose of audit and examination, and the Governmental Agency shall submit to the Authority and the Council such documents and information as they may reasonably require in connection with the construction, acquisition and installation of the Project, the operation and maintenance of the System and the administration of the Loan or of any State and federal grants or other sources of financing for the Project.

2.6 The Governmental Agency agrees that it will permit the Authority and the Council and their agents and representatives to have access to the records of the Governmental Agency pertaining to the operation and maintenance of the System at any reasonable time following completion of construction of the Project and commencement of operation thereof or if the Project is an improvement to an existing system at any reasonable time following commencement of construction.

2.7 The Governmental Agency shall require that each construction contractor furnish a performance bond and a payment bond, each in an amount at least equal to one hundred percent (100%) of the contract price of the portion of the Project covered by the particular contract as security for the faithful performance of such contract and shall verify or have verified such bonds prior to commencement of construction.

2.8 The Governmental Agency shall require that each of its contractors and all subcontractors maintain, during the life of the construction contract, workers' compensation coverage, public liability insurance, property damage insurance and vehicle liability insurance in amounts and on terms satisfactory to the Council and the Authority and shall verify or have verified such insurance prior to commencement of construction. Until the Project facilities are completed and accepted by the Governmental Agency, the Governmental Agency or (at the option of the Governmental Agency) the contractor shall

maintain builder's risk insurance (fire and extended coverage) on a one hundred percent (100%) basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Governmental Agency, the prime contractor and all subcontractors, as their interests may appear. If facilities of the System which are detrimentally affected by flooding are or will be located in designated special flood or mudslide-prone areas and if flood insurance is available at a reasonable cost, a flood insurance policy must be obtained by the Governmental Agency on or before the Date of Loan Closing, as hereinafter defined, and maintained so long as any of the Local Bonds is outstanding. Prior to commencing operation of the Project, the Governmental Agency must also obtain, and maintain so long as any of the Local Bonds are outstanding, business interruption insurance if available at a reasonable cost.

2.9 The Governmental Agency shall provide and maintain competent and adequate engineering services satisfactory to the Council and the Authority covering the supervision and inspection of the development and construction of the Project, and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such engineer shall certify to the Authority, the Council and the Governmental Agency at the completion of construction that construction is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies.

2.10 The Governmental Agency shall at all times provide operation and maintenance of the System in compliance with any and all State and federal standards. The Governmental Agency shall employ qualified operating personnel properly certified by the State to operate the System during the entire term of this Loan Agreement.

2.11 The Governmental Agency hereby covenants and agrees to comply with all applicable laws, rules and regulations issued by the Council, the Authority or other State, federal or local bodies in regard to the construction of the Project and operation, maintenance and use of the System.

2.12 The Governmental Agency, commencing on the date contracts are executed for the acquisition or construction of the Project and for two years following the completion of acquisition or construction of the Project, shall each month complete a Monthly Financial Report, the form of which is attached hereto as Exhibit C and incorporated herein by reference, and forward a copy by the 10th of each month to the Authority and Council.

ARTICLE III

Conditions to Loan; Issuance of Local Bonds

3.1 The agreement of the Authority and Council to make the Loan is subject to the Governmental Agency's fulfillment, to the satisfaction of the Authority and the Council, of each and all of those certain conditions precedent on or before the delivery date for the Local Bonds, which shall be the date established pursuant to Section 3.4 hereof. Said conditions precedent are as follows:

(a) The Governmental Agency shall have performed and satisfied all of the terms and conditions to be performed and satisfied by it in this Loan Agreement;

(b) The Governmental Agency shall have authorized the issuance of and delivery to the Authority of the Local Bonds described in this Article III and in Article IV hereof;

(c) The Governmental Agency shall either have received bids or entered into contracts for the construction of the Project which are in an amount and otherwise compatible with the plan of financing described in the Application; provided that, if the Loan will refund an interim construction financing, the Governmental Agency must either be constructing or have constructed its Project for a cost and as otherwise compatible with the plan of financing described in the Application; and, in either case, the Authority and the Council shall have received a certificate of the Consulting Engineers to such effect, the form of which certificate is attached hereto as Exhibit A;

(d) The Governmental Agency shall have obtained all permits required by the laws of the State and the federal government necessary for the construction of the Project, and the Authority and the Council shall have received a certificate of the Consulting Engineers to such effect;

(e) The Governmental Agency shall have obtained all requisite orders of and approvals from the Public Service Commission of West Virginia (the "PSC") and the Council necessary for the construction of the Project and operation of the System, with all requisite appeal periods having expired without successful appeal, and the Authority and the Council shall have received an opinion of counsel to the Governmental Agency, which may be local counsel to the Governmental Agency, bond counsel or special PSC counsel but must be satisfactory to the Authority and the Council, to such effect;

(f) The Governmental Agency shall have obtained any and all approvals for the issuance of the Local Bonds required by State law, and the Authority and the Council shall have received an opinion of counsel to the Governmental Agency, which

may be local counsel to the Governmental Agency, bond counsel or special PSC counsel but must be satisfactory to the Authority, to such effect;

(g) The Governmental Agency shall have obtained any and all approvals of rates and charges required by State law and shall have taken any other action required to establish and impose such rates and charges (imposition of such rates and charges is not, however, required to be effective until completion of construction of the Project), with all requisite appeal periods having expired without successful appeal, and the Authority and the Council shall have received an opinion of counsel to the Governmental Agency, which may be local counsel to the Governmental Agency, bond counsel or special PSC counsel but must be satisfactory to the Authority and the Council, to such effect;

(h) Such rates and charges for the System shall be sufficient to comply with the provisions of Subsections 4.1(a) and 4.1(b)(ii) hereof, and the Authority and the Council shall have received a certificate of the accountant for the Governmental Agency, or such other person or firm experienced in the finances of governmental agencies and satisfactory to the Authority and the Council, to such effect; and

(i) The net proceeds of the Local Bonds, together with all moneys on deposit or to be simultaneously deposited (or, with respect to proceeds of grant anticipation notes or other indebtedness for which a binding purchase contract has been entered, to be deposited on a date certain) and irrevocably pledged thereto and the proceeds of grants irrevocably committed therefor, shall be sufficient to pay the costs of construction and acquisition of the Project as set forth in the Application, and the Authority shall have received a certificate of the Consulting Engineers, or such other person or firm experienced in the financing of projects and satisfactory to the Authority and the Council, to such effect, such certificate to be in form and substance satisfactory to the Authority and the Council, and evidence satisfactory to the Authority and the Council of such irrevocably committed grants.

3.2 Subject to the terms and provisions of this Loan Agreement, the rules and regulations promulgated by the Authority, the Council or any other appropriate State agency and any applicable rules, regulations and procedures promulgated from time to time by the federal government, it is hereby agreed that the Authority shall make the Loan to the Governmental Agency and the Governmental Agency shall accept the Loan from the Authority, and in furtherance thereof it is agreed that the Governmental Agency shall sell to the Authority and the Authority shall make the Loan by purchasing the Local Bonds in the principal amount and at the price set forth in Schedule X hereto. The Local Bonds shall have such further terms and provisions as described in Article IV hereof.

3.3 The Loan shall be secured and shall be repaid in the manner hereinafter provided in this Loan Agreement.

3.4 The Local Bonds shall be delivered to the Authority, at the offices of the Authority, on a date designated by the Governmental Agency by written notice to the

Authority, which written notice shall be given not less than ten (10) business days prior to the date designated; provided, however, that if the Authority is unable to accept delivery on the date designated, the Local Bonds shall be delivered to the Authority on a date as close as possible to the designated date and mutually agreeable to the Authority, the Council and the Governmental Agency. The date of delivery so designated or agreed upon is hereinafter referred to as the "Date of Loan Closing." Notwithstanding the foregoing, the Date of Loan Closing shall in no event occur more than ninety (90) days after the date of execution of this Loan Agreement by the Authority or such later date as is agreed to in writing by the Council.

3.5 The Governmental Agency understands and acknowledges that it is one of several governmental agencies which have applied to the Council for loans from the Infrastructure Fund to finance projects and that the obligation of the Authority to make any such loan is subject to the Council's authorization and the Governmental Agency's fulfilling all of the terms and conditions of this Loan Agreement on or prior to the Date of Loan Closing. The Governmental Agency specifically recognizes that the Authority will not purchase the Local Bonds unless and until sufficient funds are available in the Infrastructure Fund to purchase all the Local Bonds and that, prior to execution of this Loan Agreement, the Authority may commit to and purchase the revenue bonds of other governmental agencies for which it has sufficient funds available.

ARTICLE IV

Local Bonds; Security for Loan; Repayment of Loan; Interest on Loan; Fees and Charges

4.1 The Governmental Agency shall, as one of the conditions of the Authority to make the Loan, authorize the issuance of and issue the Local Bonds pursuant to an official action of the Governmental Agency in accordance with the Local Statute, which shall, as adopted or enacted, contain provisions and covenants in substantially the form as follows, unless the specific provision or covenant is modified or waived by the Council:

(a) That the gross revenues of the System shall always be used for purposes of the System. Such gross revenues shall be used monthly, in the order of priority listed below:

- (i) to pay Operating Expenses of the System;
- (ii) to the extent not otherwise limited by any outstanding loan resolution, indenture or other act or document and beginning on the date set forth in Schedule X, to provide debt service on the Local Bonds by depositing in a sinking fund one-third (1/3) of the interest payment next coming due on the Local Bonds and one-third (1/3) of the principal payment next coming due on the Local Bonds and, beginning three (3) months prior

to the first date of payment of principal of the Local Bonds, if the reserve account for the Local Bonds (the "Reserve Account") was not funded from proceeds of the Local Bonds or otherwise concurrently with the issuance thereof (which, with an approving opinion of bond counsel to the Governmental Agency, may be with a letter of credit or surety) in an amount equal to the maximum amount of principal and interest which will come due on the Local Bonds in the then current or any succeeding year (the "Reserve Requirement"), by depositing in the Reserve Account an amount not less than one-twelfth (1/12) of one-tenth (1/10) of the Reserve Requirement or, if the Reserve Account has been so funded (whether by Local Bond proceeds, monthly deposits or otherwise), any amount necessary to maintain the Reserve Account at the Reserve Requirement;

(iii) to create a renewal and replacement, or similar, fund in an amount equal to two and one-half percent (2-1/2%) of the gross revenues from the System, exclusive of any payments into the Reserve Account, for the purpose of improving or making emergency repairs or replacements to the System or eliminating any deficiencies in the Reserve Account; and

(iv) for other legal purposes of the System, including payment of debt service on other obligations junior, subordinate and inferior to the Local Bonds.

Provided, that if the Governmental Agency has existing outstanding indebtedness which has greater coverage or renewal and replacement fund requirements, then the greater requirements will prevail until said existing indebtedness is paid in full.

(b) Covenants substantially as follows:

(i) That the Local Bonds shall be secured by a pledge of either the gross or net revenues of the System, as more fully set forth in Schedule X attached hereto and in the Local Act;

(ii) That the schedule of rates or charges for the services of the System shall be sufficient to provide funds which, along with other revenues of the System, will pay all Operating Expenses and leave a balance each year equal to at least one hundred fifteen percent (115%) of the maximum amount required in any year for debt service on the Local Bonds and all other obligations secured by a lien on or payable from the revenues of the System prior to or on a parity with the Local Bonds or, if the Reserve Account is funded (whether by Local Bond proceeds, monthly deposits or otherwise) at an amount equal to the Reserve Requirement and any reserve account for any such prior or parity obligations is funded at least at the requirement therefor, equal to at least one hundred ten percent (110%) of the maximum amount required in any year for debt service on the Local Bonds and any such prior or parity obligations;

(iii) That the Governmental Agency shall complete the Project and operate and maintain the System in good condition;

(iv) That, except as otherwise required by State law or with the written consent of the Council and the Authority, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to pay fully all the Local Bonds outstanding, with further restrictions on the disposition of portions of the System as are normally contained in such covenants;

(v) That the Governmental Agency shall not issue any other obligations payable from the revenues of the System which rank prior to, or equally, as to lien and security with the Local Bonds, except parity bonds which shall only be issued if net revenues of the System prior to issuance of such parity bonds, plus reasonably projected revenues from rate increases and the improvements to be financed by such parity bonds, shall not be less than one hundred fifteen percent (115%) of the maximum debt service in any succeeding year on all Local Bonds and parity bonds theretofore and then being issued and on any obligations secured by a lien on or payable from the revenues of the System prior to the Local Bonds and with the prior written consent of the Authority and the Council; provided, however, that additional parity bonds may be issued to complete the Project, as described in the Application as of the date hereof, without regard to the foregoing;

(vi) That the Governmental Agency will carry such insurance as is customarily carried with respect to works and properties similar to the System, including those specified by Section 2.8 hereof;

(vii) That the Governmental Agency will not render any free services of the System;

(viii) That the Authority may, by proper legal action, compel the performance of the duties of the Governmental Agency under the Local Act, including the making and collection of sufficient rates or charges for services rendered by the System, and shall also have, in the event of a default in payment of principal of or interest on the Local Bonds, the right to obtain the appointment of a receiver to administer the System or construction of the Project, or both, as provided by law;

(ix) That, to the extent authorized by the laws of the State and the rules and regulations of the PSC, all delinquent rates and charges, if not paid when due, shall become a lien on the premises served by the System;

(x) That, to the extent legally allowable, the Governmental Agency will not grant any franchise to provide any services which would compete with the System;

(xi) That the Governmental Agency shall annually cause the records of the System to be audited by an independent certified public accountant or independent public accountant and shall submit the report of said audit to the Authority and

the Council, which report shall include a statement that notes whether the results of tests disclosed instances of noncompliance that are required to be reported under government auditing standards and, if they are, describes the instances of noncompliance and the audited financial statements shall include a statement that notes whether the Governmental Agency's revenues are adequate to meet its Operating Expenses and debt service and reserve requirements;

(xii) That the Governmental Agency shall annually adopt a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding fiscal year and shall submit a copy of such budget to the Authority and the Council within 30 days of adoption thereof;

(xiii) That, to the extent authorized by the laws of the State and the rules and regulations of the PSC, prospective users of the System shall be required to connect thereto;

(xiv) That the proceeds of the Local Bonds, advanced from time to time, must (a) be deposited in a construction fund, which, except as otherwise agreed to in writing by the Authority, shall be held separate and apart from all other funds of the Governmental Agency and on which the owners of the Local Bonds shall have a lien until such proceeds are applied to the construction of the Project (including the repayment of any incidental interim financing) and/or (b) be used to pay (or redeem) bond anticipation notes or other interim financing of such Governmental Agency, the proceeds of which were used to finance the construction of the Project; provided that, with the prior written consent of the Authority and the Council, the proceeds of the Local Bonds may be used to fund all or a portion of the Reserve Account, on which the owner of the Local Bonds shall have a lien as provided herein;

(xv) That, as long as the Authority is the owner of any of the Local Bonds, the Governmental Agency may not redeem any Local Bonds by it without the written consent of the Authority and the Council and otherwise in compliance with this Loan Agreement;

(xvi) That the West Virginia Municipal Bond Commission (the "Commission") shall serve as paying agent for the Local Bonds;

(xvii) That the Governmental Agency shall on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the required interest, principal and reserve account payment. The Governmental Agency shall complete the Monthly Payment Form, attached hereto as Exhibit D and incorporated herein by reference, and submit a copy of said form along with a copy of the check or electronic transfer to the Authority by the 5th day of such calendar month;

(xviii) That, unless it qualifies for an exception to the provisions of Section 148 of the Internal Revenue Code of 1986, as amended, which exception shall be set forth in an opinion of bond counsel, the Governmental Agency will furnish to the Authority, annually, at such time as it is required to perform its rebate calculations under the Internal Revenue Code of 1986, as amended, a certificate with respect to its rebate calculations and, at any time, any additional information requested by the Authority;

(xix) That the Governmental Agency shall take any and all action, or shall refrain from taking any action regarding the use of the proceeds of the Local Bonds, as shall be deemed necessary by the Authority to maintain the exclusion from gross income for federal income tax purposes of interest on the State's general obligation bonds or any bonds secured by the Local Bonds;

(xx) That the Governmental Agency shall have obtained the certificate of the Consulting Engineer in the form attached hereto as Exhibit A, to the effect that the Project has been or will be constructed in accordance with the approved plans, specifications and design as submitted to the Authority and the Council, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and the Council is sufficient to pay the costs of acquisition and construction of the Project and all permits required by federal and State laws for construction of the Project have been obtained;

(xxi) That the Governmental Agency shall, to the full extent permitted by applicable law and the rules and regulations of the PSC, terminate the services of any water facility owned by it to any customer of the System who is delinquent in payment of charges for services provided by the System and will not restore the services of the water facility until all delinquent charges for the services of the System have been fully paid or, if the water facility is not owned by the Governmental Agency, then the Governmental Agency shall enter into a termination agreement with the water provider;

(xxii) That the Governmental Agency shall furnish to the Authority such information with respect to earnings on all funds constituting "gross proceeds" of the Local Bonds (as that term is defined in the Internal Revenue Code of 1986, as amended) from time to time as the Authority may request;

(xxiii) That the Governmental Agency shall submit all proposed change orders to the Council for written approval. The Governmental Agency shall obtain the written approval of the Council before expending any proceeds of the Local Bonds held in "contingency" as set forth in the final Schedule B attached to the certificate of the Consulting Engineer. The Governmental Agency shall obtain the written approval of the Council before expending any proceeds of the Local Bonds available due to bid/construction/project underruns;

(xxiv) That the Governmental Agency shall list the funding provided by the Authority and the Council in any press release, publication, program bulletin, sign or other public communication that references the Project, including but not limited to any program document distributed in conjunction with any groundbreaking or dedication of the Project; and

(xxv) That, unless it qualifies for an exception, the Governmental Agency shall comply with all the requirements of Chapter 21, Article 1C of the Code of West Virginia, 1931, as amended (the "West Virginia Jobs Act") and shall require its contractors and subcontractors to comply with the West Virginia Jobs Act. The Governmental Agency shall provide the Council and the Authority with a certificate stating that (I) the Governmental Agency will comply with all the requirements of the West Virginia Jobs Act; (II) the Governmental Agency has included the provisions of the West Virginia Jobs Act in each contract and subcontract for the Project; (III) the Governmental Agency has received or will receive, prior to entering into contracts or subcontracts, from each contractor or subcontractor a certificate demonstrating compliance with Section 4 of the West Virginia Jobs Act or waiver certificates from the West Virginia Division of Labor ("DOL"); and (IV) the Governmental Agency will file with the DOL and the Council copies of the waiver certificates and certified payrolls or comparable documents that include the number of employees, the county and state wherein the employees reside and their occupation, following the procedures established by the DOL. The monthly requisitions submitted to the Council shall also certify that the Governmental Agency is monitoring compliance by its contractors and subcontractors and that the required information has been submitted.

The Governmental Agency hereby represents and warrants that the Local Act has been or shall be duly adopted in compliance with all necessary corporate and other action and in accordance with applicable provisions of law. All legal matters incident to the authorization, issuance, validity, sale and delivery of the Local Bonds shall be approved without qualification by recognized bond counsel acceptable to the Authority in substantially the form of legal opinion attached hereto as Exhibit B.

4.2 The Loan shall be secured by the pledge and assignment by the Governmental Agency, as effected by the Local Act, of the fees, charges and other revenues of the Governmental Agency from the System as further set forth by and subject only to such reservations and exceptions as are described in Schedules X and Y hereto or are otherwise expressly permitted in writing by the Authority and the Council.

4.3 The principal of the Loan shall be repaid by the Governmental Agency on the days and in the years provided in Schedule X hereto. Interest payments on the Loan shall be made by the Governmental Agency on a quarterly basis as provided in said Schedule X.

4.4 The Loan shall bear interest from the date and at the rate or rates per annum set forth on Schedule X hereto. In no event shall the interest rate on or the net interest cost of the Local Bonds exceed any statutory limitation with regard thereto.

4.5 The Local Bonds shall be delivered to the Authority in fully registered form, transferable and exchangeable as provided in the Local Act at the expense of the Governmental Agency. Anything to the contrary herein notwithstanding, the Local Bonds may be issued in one or more series, as reflected by Schedule X hereto.

4.6 The Governmental Agency agrees to expend the net proceeds of the Local Bonds for the Project within 3 years of the issuance of the bonds which are the source of money used to purchase the Local Bonds, unless otherwise agreed to by the Council.

ARTICLE V

Certain Covenants of the Governmental Agency; Imposition and Collection of User Charges; Payments To Be Made by Governmental Agency to the Authority

5.1 The Governmental Agency hereby irrevocably covenants and agrees to comply with all of the terms, conditions and requirements of this Loan Agreement and the Local Act. The Governmental Agency hereby further irrevocably covenants and agrees that, as one of the conditions of the Authority to make the Loan, it has fixed and collected, or will fix and collect, the rates, fees and other charges for the use of the System and will take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Local Act and in compliance with the provisions of Subsections 4.1(a) and 4.1(b)(ii) hereof.

5.2 In the event, for any reason, the schedule of rates, fees and charges initially established for the System in connection with the Local Bonds shall prove to be insufficient to produce the required sums set forth in the Local Act and this Loan Agreement, the Governmental Agency hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges (or where applicable, immediately file with the PSC for a rate increase) and take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Local Act and this Loan Agreement.

5.3 In the event the Governmental Agency defaults in the payment due to the Authority pursuant to this Loan Agreement, the amount of such default shall bear interest at the interest rate of the installment of the Loan next due, from the date of the default until the date of the payment thereof.

5.4 The Governmental Agency hereby irrevocably covenants and agrees with the Authority that, in the event of any default hereunder by the Governmental Agency, the Authority may exercise any or all of the rights and powers granted under the Act and State law, including, without limitation, the right to an appointment of a receiver.

ARTICLE VI

Other Agreements of the Governmental Agency

6.1 The Governmental Agency hereby warrants and represents that all information provided to the Authority and the Council in this Loan Agreement, in the Application or in any other application or documentation with respect to financing the Project was at the time, and now is, true, correct and complete, and such information does not omit any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. Prior to the Authority's making the Loan and receiving the Local Bonds, the Authority and the Council shall have the right to cancel all or any of their obligations under this Loan Agreement if (a) any representation made to the Authority and the Council by the Governmental Agency in connection with the Loan shall be incorrect or incomplete in any material respect or (b) the Governmental Agency has violated any commitment made by it in its Application or in any supporting documentation or has violated any of the terms of the Act or this Loan Agreement.

6.2 The Governmental Agency hereby covenants that it will rebate any amounts required by Section 148 of the Internal Revenue Code of 1986, as amended, and will take all steps necessary to make any such rebates. In the event the Governmental Agency fails to make any such rebates as required, then the Governmental Agency shall pay any and all penalties, obtain a waiver from the Internal Revenue Service and take any other actions necessary or desirable to preserve the exclusion from gross income for federal income tax purposes of interest on the Local Bonds.

6.3 Notwithstanding Section 6.2, the Authority may at any time, in its sole discretion, cause the rebate calculations prepared by or on behalf of the Governmental Agency to be monitored or cause the rebate calculations for the Governmental Agency to be prepared, in either case at the expense of the Governmental Agency.

6.4 The Governmental Agency hereby agrees to give the Authority and the Council prior written notice of the issuance by it of any other obligations to be used for the System, payable from the revenues of the System or from any grants for the Project or otherwise related to the Project or the System.

6.5 The Governmental Agency hereby agrees to file with the Authority and the Council upon completion of acquisition and construction of the Project a schedule in

substantially the form of Amended Schedule B to the Application, setting forth the actual costs of the Project and sources of funds therefor.

ARTICLE VII

Miscellaneous

7.1 Additional definitions, additional terms and provisions of the Loan and additional covenants and agreements of the Governmental Agency, if any, may be set forth in Schedule Z attached hereto and incorporated herein by reference, with the same effect as if contained in the text of this Loan Agreement.

7.2 Schedules X and Y shall be attached to this Loan Agreement by the Authority as soon as practicable after the Date of Loan Closing is established and shall be approved by an official action of the Governmental Agency supplementing the Local Act, a certified copy of which official action shall be submitted to the Authority and the Council.

7.3 The Authority shall take all actions required by the Council in making and enforcing this Loan Agreement.

7.4 If any provision of this Loan Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Loan Agreement, and this Loan Agreement shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

7.5 This Loan Agreement may be executed in one or more counterparts, any of which shall be regarded for all purposes as an original and all of which constitute but one and the same instrument. Each party agrees that it will execute any and all documents or other instruments and take such other actions as may be necessary to give effect to the terms of this Loan Agreement.

7.6 No waiver by either party of any term or condition of this Loan Agreement shall be deemed or construed as a waiver of any other terms or conditions, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different section, subsection, paragraph, clause, phrase or other provision of this Loan Agreement.

7.7 This Loan Agreement supersedes all prior negotiations, representations and agreements between the parties hereto relating to the Loan and constitutes the entire agreement between the parties hereto in respect thereof.

7.8 The Authority acknowledges that certain terms and requirements in this Loan Agreement may not be applicable when the Project is financed in part by the West Virginia Department of Environmental Protection, Office of Abandoned Mine Lands and under that circumstance those terms and requirements are specifically waived or modified as agreed to by the Authority and set forth in the Local Act.

7.9 By execution and delivery of this Loan Agreement, notwithstanding the date hereof, the Governmental Agency specifically recognizes that it is hereby agreeing to sell its Local Bonds to the Authority and that such obligation may be specifically enforced or subject to a similar equitable remedy by the Authority.

7.10 This Loan Agreement shall terminate upon the earlier of:

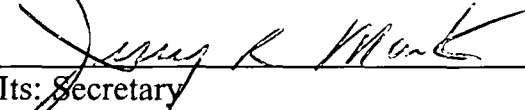
- (i) the end of ninety (90) days after the date of execution hereof by the Authority or such later date as is agreed to in writing by the Council if the Governmental Agency has failed to deliver the Local Bonds to the Authority;
- (ii) termination by the Authority and the Council pursuant to Section 6.1 hereof; or
- (iii) payment in full of the principal of and interest on the Loan and of any fees and charges owed by the Governmental Agency to the Authority, acting on behalf of the Council.

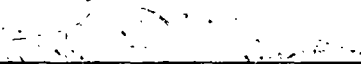
IN WITNESS WHEREOF, the parties hereto have caused this Loan Agreement to be executed by their respective duly authorized officers as of the date executed below by the Authority.

LUBECK PUBLIC SERVICE DISTRICT

(SEAL)

Attest:


Its: Secretary

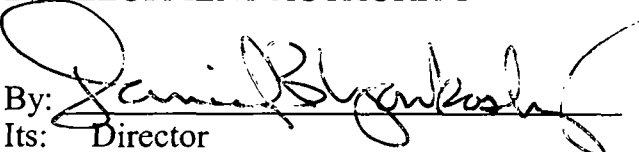
By: 
Its: Chairperson
Date: September 27, 2005

WEST VIRGINIA WATER
DEVELOPMENT AUTHORITY

(SEAL)

Attest:


Its: Secretary-Treasurer

By: 
Its: Director
Date: September 27, 2005

017542/00301
09/02/05

EXHIBIT A

FORM OF CERTIFICATE OF CONSULTING ENGINEER

(Issuer)

(Name of Bonds)

I, _____, Registered Professional Engineer, West Virginia License No. _____, of _____, Consulting Engineers, _____, hereby certify as follows:

1. My firm is engineer for the acquisition and construction of _____ to the _____ system (the "Project") of _____ (the "Issuer"), to be constructed primarily in _____ County, West Virginia, which acquisition and construction are being permanently financed in part by the above-captioned bonds (the "Bonds") of the Issuer. Capitalized words not defined herein shall have the same meanings set forth in the bond _____ adopted or enacted by the Issuer on _____, and the Loan Agreement by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), dated _____.

2. The Bonds are being issued for the purposes of (i) _____, and (ii) paying certain issuance and other costs in connection therewith.

3. To the best of my knowledge, information and belief, (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in general accordance with the approved plans, specifications and designs prepared by my firm and approved by [DEP/BPH/PSC] and any change orders approved by the Issuer, the Council and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least _____ years if properly operated and maintained, excepting anticipated replacements due to normal wear and tear; (iii) the Issuer has received bids for the acquisition and construction of the Project which are in an amount and otherwise compatible with the plan of financing

set forth in the Schedule B attached hereto as Exhibit A and my firm¹ has ascertained that all successful bidders have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified for accuracy; (iv) the successful bidders received any and all addenda to the original bid documents; (v) the bid documents relating to the Project reflect the Project as approved by the [DEP/BPH/PSC] and the bid forms provided to the bidders contain all critical operational components of the Project; (vi) the successful bids include prices for every item on such bid forms; (vii) the uniform bid procedures were followed; (viii) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project and operation of the System; (ix) as of the effective date thereof, ²the rates and charges for the System as adopted by the Issuer will be sufficient to comply with the provisions of the Loan Agreement; (x) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project set forth in the Schedule B attached hereto and approved by the Council; and (xi) attached hereto as Exhibit A is the final amended "Schedule B - Final Total Cost of Project, Sources of Funds and Costs of Financing" for the Project.

WITNESS my signature and seal on this ____ day of _____, ____.

[SEAL]

By: _____
West Virginia License No. _____

¹If another responsible party, such as the Issuer's attorney, reviews the insurance and payment bonds, then insert the following: [and in reliance upon the opinion of _____, Esq.] and delete "my firm has ascertained that".

²If the Rule 42 Exhibit and/or rate structure was prepared by an accountant, then insert the following: "In reliance upon the certificate of _____ of even date herewith," at the beginning of (ix).

EXHIBIT B

OPINION OF BOND COUNSEL FOR GOVERNMENTAL AGENCY

[To Be Dated as of Date of Loan Closing]

West Virginia Infrastructure and
Jobs Development Council
300 Summers Street, Suite 980
Charleston, West Virginia 25301

West Virginia Water Development Authority
180 Association Drive
Charleston, West Virginia 25311

Ladies and Gentlemen:

We are bond counsel to _____ (the
"Governmental Agency"), a _____.

We have examined a certified copy of proceedings and other papers relating to the authorization of (i) a loan agreement dated _____, _____, including all schedules and exhibits attached thereto (the "Loan Agreement"), between the Governmental Agency and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), and (ii) the issue of a series of revenue bonds of the Governmental Agency, dated _____, _____ (the "Local Bonds"), to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Local Bonds are issued in the principal amount of \$_____, in the form of one bond, registered as to principal and interest to the Authority, with interest and principal payable quarterly on March 1, June 1, September 1 and December 1 of each year, beginning _____, 1, _____, and ending _____, 1, _____, as set forth in the "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Local Bonds.

The Local Bonds are issued for the purposes of (i) _____, and
(ii) paying certain issuance and other costs in connection therewith.

We have also examined the applicable provisions of _____ of the Code of West Virginia, 1931, as amended (the "Local Statute"), and the bond _____ duly adopted or enacted by the Governmental Agency on _____, as supplemented by the supplemental resolution duly adopted by the Governmental Agency on _____ (collectively, the "Local Act"), pursuant to and under which Local Statute and Local Act the Local Bonds are authorized and issued, and the Loan Agreement has been undertaken. The Local Bonds are subject to redemption prior

to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Local Act and the Loan Agreement.

Based upon the foregoing and upon our examination of such other documents as we have deemed necessary, we are of the opinion as follows:

1. The Loan Agreement has been duly authorized by and executed on behalf of the Governmental Agency and is a valid and binding special obligation of the Governmental Agency, enforceable in accordance with the terms thereof.

2. The Loan Agreement inures to the benefit of the Authority and the Council and cannot be amended so as to affect adversely the rights of the Authority or the Council or diminish the obligations of the Governmental Agency without the consent of the Authority and the Council.

3. The Governmental Agency is a duly organized and validly existing _____, with full power and authority to acquire and construct the Project, to operate and maintain the System, to adopt or enact the Local Act and to issue and sell the Local Bonds, all under the Local Statute and other applicable provisions of law.

4. The Local Act and all other necessary orders and resolutions have been legally and effectively adopted or enacted by the Governmental Agency and constitute valid and binding obligations of the Governmental Agency, enforceable against the Governmental Agency in accordance with their terms. The Local Act contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

5. The Local Bonds have been duly authorized, issued, executed and delivered by the Governmental Agency to the Authority and are valid, legally enforceable and binding special obligations of the Governmental Agency, payable from the net or gross revenues of the System set forth in the Local Act and secured by a first lien on and pledge of the net or gross revenues of the System, all in accordance with the terms of the Local Bonds and the Local Act.

6. The Local Bonds are, by statute, exempt _____, and under existing statutes and court decisions of the United States of America, as presently written and applied, the interest on the Local Bonds is excludable from the gross income of the recipients thereof for federal income tax purposes.

No opinion is given herein as to the effect upon enforceability of the Local Bonds of bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights or in the exercise of judicial discretion in appropriate cases.

We have examined the executed and authenticated Local Bond numbered R-1, and in our opinion the form of said bond and its execution and authentication are regular and proper.

Very truly yours,

EXHIBIT C

MONTHLY FINANCIAL REPORT

Name of Governmental Agency _____
 Name of Bond Issue(s) _____
 Type of Project _____ Water _____ Wastewater _____
 Fiscal Year _____ Report Month _____

<u>Item</u>	<u>Current Month</u>	<u>Total Year To Date</u>	<u>Budget Year To Date</u>	<u>Budget Year To Date Minus Total Year To Date</u>
1. Gross Revenues	_____	_____	_____	_____
2. Operating Expenses	_____	_____	_____	_____
3. Bond Payments:				
<u>Type of Issue</u>				
Clean Water SRF	_____	_____	_____	_____
Drinking Water TRF	_____	_____	_____	_____
Infrastructure Fund	_____	_____	_____	_____
Water Development	_____	_____	_____	_____
Authority				
Rural Utilities Service	_____	_____	_____	_____
Economic Development				
Administration	_____	_____	_____	_____
Other (Identify)	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
4. Renewal and Replacement Fund Deposits	_____	_____	_____	_____

 Name of Person Completing Form

 Address

 Telephone

INSTRUCTIONS FOR COMPLETING MONTHLY FINANCIAL REPORT

- Item 1 You will need a copy of the current fiscal year budget adopted by the Governmental Agency to complete Items 1 and 2. In Item 1, provide the amount of actual **Gross Revenues** for the current month and the total amount year-to-date in the respective columns. Divide the budgeted annual Gross Revenues by 12. For example, if Gross Revenues of \$1,200 are anticipated to be received for the year, each month the base would be increased by \$100 ($\$1,200/12$). This is the incremental amount for the Budget Year-to-Date column.
- Item 2 Provide the amount of actual **Operating Expenses** for the current month and the total amount year-to-date in the respective columns. Any administrative fee should be included in the Operating Expenses. Divide the budgeted annual Operating Expenses by 12. For example, if Operating Expenses of \$900 are anticipated to be incurred for the year, each month the base would be increased by \$75 ($\$900/12$). This is the incremental amount for the Budget Year-to-Date column.
- Item 3 Provide the **Bond Payments (principal, interest and reserve account)** for all the outstanding bonds of the Governmental Agency according to the source of funding. For example, Clean Water State Revolving Fund loan from Department of Environmental Protection, Drinking Water Treatment Revolving Fund loan from Bureau for Public Health, Infrastructure Fund loan from Infrastructure and Jobs Development Council, or a loan from the Water Development Authority, etc.
- Item 4 Provide the amount deposited into the **Renewal and Replacement Fund** each month. This amount is equal to 2.5% of Gross Revenues minus the total reserve account payments included in Item 3. If Gross Revenues are \$1,200, then \$30 (2.5% of \$1,200), LESS the amount of all reserve account payments in Item 3 should be deposited into the Renewal and Replacement Fund. The money in the Renewal and Replacement Fund should be kept separate and apart from all other funds of the Governmental Agency.

The Governmental Agency must complete the Monthly Financial Report and forward it to the Water Development Authority by the 10th day of each month, commencing on the date contracts are executed for the acquisition or construction of the Project and for two years following the completion of acquisition or construction of the Project.

EXHIBIT D

MONTHLY PAYMENT FORM

West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311

Re: [Name of bond issue]

Ladies and Gentlemen:

The following deposits were made to the West Virginia Municipal Bond Commission on behalf of [Name of Governmental Agency] on [Date].

Sinking Fund:

Interest \$_____

Principal \$_____

Total: \$_____

Reserve Account: \$_____

Witness my signature this ____ day of_____.

[Name of Governmental Agency]

By: _____
Authorized Officer

Enclosure: copy of check(s)

SCHEDULE X

DESCRIPTION OF LOCAL BONDS

Principal Amount of Local Bonds \$2,411,178

Purchase Price of Local Bonds \$2,411,178

The Local Bonds shall bear no interest. Commencing September 1, 2009, principal of the Local Bonds is payable quarterly. Quarterly payments will be made on March 1, June 1, September 1 and December 1 of each year as set forth on the Schedule Y attached hereto and incorporated herein by reference.

The Governmental Agency shall submit its payments monthly to the Commission which will make quarterly payments to the Authority at such address as is given to the Commission in writing by the Authority.

The Local Bonds are fully registered in the name of the Authority as to interest, if any, and principal and the Local Bonds shall grant the Authority a first lien on the gross or net revenues of the Governmental Agency's system as provided in the Local Act.

The Governmental Agency may prepay the Local Bonds in full at any time at the price of par but only with the Council's written consent. The Governmental Agency shall request approval from the Authority and Council in writing of any proposed debt which will be issued by the Governmental Agency on a parity with the Local Bonds which request must be filed at least 60 days prior to the intended date of issuance.

As of the date of the Loan Agreement, the Local Bonds are on a parity as to liens, pledge and source of and security for payment with the following obligations of the Governmental Agency:

1. Sewerage System Revenue Bonds, Series 1999 A (West Virginia SRF Program), dated March 9, 1999, issued in the principal amount of \$7,950,000.
2. Sewerage System Revenue Bonds, Series 1999 B (West Virginia Infrastructure Fund), dated March 9, 1999, issued in the principal amount of \$2,000,000.
3. Sewer Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), dated September 27, 2005, issued in the principal amount of \$7,879,443.

SCHEDULE Y

\$2,411,178

Lubeck Public Service District

0% Interest Rate

Closing Date: September 27, 2005

Debt Service Schedule

Part 1 of 4

Date	Principal	Coupon	Total P+I
12/01/2005	-	-	-
03/01/2006	-	-	-
06/01/2006	-	-	-
09/01/2006	-	-	-
12/01/2006	-	-	-
03/01/2007	-	-	-
06/01/2007	-	-	-
09/01/2007	-	-	-
12/01/2007	-	-	-
03/01/2008	-	-	-
06/01/2008	-	-	-
09/01/2008	-	-	-
12/01/2008	-	-	-
03/01/2009	-	-	-
06/01/2009	-	-	-
09/01/2009	20,262.00	-	20,262.00
12/01/2009	20,262.00	-	20,262.00
03/01/2010	20,262.00	-	20,262.00
06/01/2010	20,262.00	-	20,262.00
09/01/2010	20,262.00	-	20,262.00
12/01/2010	20,262.00	-	20,262.00
03/01/2011	20,262.00	-	20,262.00
06/01/2011	20,262.00	-	20,262.00
09/01/2011	20,262.00	-	20,262.00
12/01/2011	20,262.00	-	20,262.00
03/01/2012	20,262.00	-	20,262.00
06/01/2012	20,262.00	-	20,262.00
09/01/2012	20,262.00	-	20,262.00
12/01/2012	20,262.00	-	20,262.00
03/01/2013	20,262.00	-	20,262.00
06/01/2013	20,262.00	-	20,262.00
09/01/2013	20,262.00	-	20,262.00
12/01/2013	20,262.00	-	20,262.00
03/01/2014	20,262.00	-	20,262.00
06/01/2014	20,262.00	-	20,262.00
09/01/2014	20,262.00	-	20,262.00
12/01/2014	20,262.00	-	20,262.00
03/01/2015	20,262.00	-	20,262.00
06/01/2015	20,262.00	-	20,262.00
09/01/2015	20,262.00	-	20,262.00
12/01/2015	20,262.00	-	20,262.00
03/01/2016	20,262.00	-	20,262.00
06/01/2016	20,262.00	-	20,262.00
09/01/2016	20,262.00	-	20,262.00

IF #2 08-31-05 | SINGLE PURPOSE | 9/ 2/2005 | 2:46 PM

Ferris, Baker Watts, Inc.
West Virginia Public Finance Office

\$2,411,178

Lubeck Public Service District

0% Interest Rate

Closing Date: September 27, 2005

Debt Service Schedule

Part 2 of 4

Date	Principal	Coupon	Total P+I
12/01/2016	20,262.00	-	20,262.00
03/01/2017	20,262.00	-	20,262.00
06/01/2017	20,262.00	-	20,262.00
09/01/2017	20,262.00	-	20,262.00
12/01/2017	20,262.00	-	20,262.00
03/01/2018	20,262.00	-	20,262.00
06/01/2018	20,262.00	-	20,262.00
09/01/2018	20,262.00	-	20,262.00
12/01/2018	20,262.00	-	20,262.00
03/01/2019	20,262.00	-	20,262.00
06/01/2019	20,262.00	-	20,262.00
09/01/2019	20,262.00	-	20,262.00
12/01/2019	20,262.00	-	20,262.00
03/01/2020	20,262.00	-	20,262.00
06/01/2020	20,262.00	-	20,262.00
09/01/2020	20,262.00	-	20,262.00
12/01/2020	20,262.00	-	20,262.00
03/01/2021	20,262.00	-	20,262.00
06/01/2021	20,262.00	-	20,262.00
09/01/2021	20,262.00	-	20,262.00
12/01/2021	20,262.00	-	20,262.00
03/01/2022	20,262.00	-	20,262.00
06/01/2022	20,262.00	-	20,262.00
09/01/2022	20,262.00	-	20,262.00
12/01/2022	20,262.00	-	20,262.00
03/01/2023	20,262.00	-	20,262.00
06/01/2023	20,262.00	-	20,262.00
09/01/2023	20,262.00	-	20,262.00
12/01/2023	20,262.00	-	20,262.00
03/01/2024	20,262.00	-	20,262.00
06/01/2024	20,262.00	-	20,262.00
09/01/2024	20,262.00	-	20,262.00
12/01/2024	20,262.00	-	20,262.00
03/01/2025	20,262.00	-	20,262.00
06/01/2025	20,262.00	-	20,262.00
09/01/2025	20,262.00	-	20,262.00
12/01/2025	20,262.00	-	20,262.00
03/01/2026	20,262.00	-	20,262.00
06/01/2026	20,262.00	-	20,262.00
09/01/2026	20,262.00	-	20,262.00
12/01/2026	20,262.00	-	20,262.00
03/01/2027	20,262.00	-	20,262.00
06/01/2027	20,262.00	-	20,262.00
09/01/2027	20,262.00	-	20,262.00

IF #2 08-31-05 | SINGLE PURPOSE | 9/ 2/2005 | 2:46 PM

Ferris, Baker Watts, Inc.
West Virginia Public Finance Office

\$2,411,178

Lubeck Public Service District

0% Interest Rate

Closing Date: September 27, 2005

Debt Service Schedule

Part 3 of 4

Date	Principal	Coupon	Total P+I
12/01/2027	20,262.00	-	20,262.00
03/01/2028	20,262.00	-	20,262.00
06/01/2028	20,262.00	-	20,262.00
09/01/2028	20,262.00	-	20,262.00
12/01/2028	20,262.00	-	20,262.00
03/01/2029	20,262.00	-	20,262.00
06/01/2029	20,262.00	-	20,262.00
09/01/2029	20,262.00	-	20,262.00
12/01/2029	20,262.00	-	20,262.00
03/01/2030	20,262.00	-	20,262.00
06/01/2030	20,262.00	-	20,262.00
09/01/2030	20,262.00	-	20,262.00
12/01/2030	20,262.00	-	20,262.00
03/01/2031	20,262.00	-	20,262.00
06/01/2031	20,262.00	-	20,262.00
09/01/2031	20,262.00	-	20,262.00
12/01/2031	20,262.00	-	20,262.00
03/01/2032	20,262.00	-	20,262.00
06/01/2032	20,262.00	-	20,262.00
09/01/2032	20,262.00	-	20,262.00
12/01/2032	20,262.00	-	20,262.00
03/01/2033	20,262.00	-	20,262.00
06/01/2033	20,262.00	-	20,262.00
09/01/2033	20,262.00	-	20,262.00
12/01/2033	20,262.00	-	20,262.00
03/01/2034	20,262.00	-	20,262.00
06/01/2034	20,262.00	-	20,262.00
09/01/2034	20,262.00	-	20,262.00
12/01/2034	20,262.00	-	20,262.00
03/01/2035	20,262.00	-	20,262.00
06/01/2035	20,262.00	-	20,262.00
09/01/2035	20,262.00	-	20,262.00
12/01/2035	20,262.00	-	20,262.00
03/01/2036	20,262.00	-	20,262.00
06/01/2036	20,262.00	-	20,262.00
09/01/2036	20,262.00	-	20,262.00
12/01/2036	20,262.00	-	20,262.00
03/01/2037	20,262.00	-	20,262.00
06/01/2037	20,262.00	-	20,262.00
09/01/2037	20,262.00	-	20,262.00
12/01/2037	20,262.00	-	20,262.00
03/01/2038	20,262.00	-	20,262.00
06/01/2038	20,262.00	-	20,262.00

IF #2 08-31-05 | SINGLE PURPOSE | 9/ 2/2005 | 2:46 PM

Ferris, Baker Watts, Inc.
West Virginia Public Finance Office

\$2,411,178

Lubeck Public Service District

0% Interest Rate

Closing Date: September 27, 2005

Debt Service Schedule

Part 4 of 4

Date	Principal	Coupon	Total P+I
09/01/2038	20,262.00	-	20,262.00
12/01/2038	20,262.00	-	20,262.00
03/01/2039	20,262.00	-	20,262.00
Total	\$2,411,178.00	-	\$2,411,178.00

Yield Statistics

Bond Year Dollars	\$45,035.45
Average Life	18.678 Years
Average Coupon	-
Net Interest Cost (NIC)	-
True Interest Cost (TIC)	-9.66E-15
Bond Yield for Arbitrage Purposes	-9.66E-15
All Inclusive Cost (AIC)	-9.66E-15

IRS Form 8038

Net Interest Cost	-
Weighted Average Maturity	18.678 Years

SCHEDULE Z

None.

IC/BAN-1
(11/01/04)

\$6,278,679

LOAN AGREEMENT

THIS LOAN AGREEMENT, made and entered into in several counterparts, by and between the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY, a governmental instrumentality and body corporate of the State of West Virginia (the "Authority"), acting on behalf of the WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL (the "Council") and the governmental agency designated below (the "Governmental Agency").

LUBECK PUBLIC SERVICE DISTRICT
(Governmental Agency)

W I T N E S S E T H:

WHEREAS, pursuant to the provisions of Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended (the "Act"), the Authority is empowered upon request of the Council to make loans to governmental agencies for the acquisition or construction of projects by such governmental agencies, subject to such provisions and limitations as are contained in the Act;

WHEREAS, the Governmental Agency constitutes a governmental agency as defined by the Act;

WHEREAS, the Governmental Agency is authorized and empowered by the statutes of the State to acquire, construct, improve, operate and maintain a project, as defined by the Act, and to finance the cost of acquisition and construction of the same by borrowing money to be evidenced by bonds, notes or other negotiable instruments issued by the Governmental Agency;

WHEREAS, the Governmental Agency intends to construct, is constructing or has constructed such a project at the location and as more particularly described and set forth in the Application, as hereinafter defined (the "Project");

WHEREAS, the Governmental Agency has completed and filed with the Authority an application for a loan with attachments and exhibits (the "Application"), which Application is incorporated herein by this reference; and

WHEREAS, having reviewed the Application and made all findings required by the Act and having available sufficient funds therefor, the Council has authorized the Authority to lend the Governmental Agency the amount set forth on Schedule X attached hereto and incorporated herein by reference, through the purchase of the notes of the Governmental Agency with money in the Infrastructure Fund, subject to the Governmental Agency's satisfaction of certain legal and other requirements of the Council's loan program (the "Program") as hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter contained, the Governmental Agency and the Authority hereby agree as follows:

ARTICLE I

Definitions

1.1 Except where the context clearly indicates otherwise, the terms "Authority," "cost," "Council," "governmental agency," "project," "waste water facility" and "water facility" have the definitions and meanings ascribed to them in the Act.

1.2 "Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser of the Notes, acting in its administrative capacity pursuant to Section 10 of the Act and upon authorization from the Council.

1.3 "Consulting Engineers" means the professional engineer, licensed by the State, designated in the Application and any qualified successor thereto; provided, however, when a Loan is made for a Project financed, in part, by the Office of Abandoned Mine Lands, "Consulting Engineers" shall mean the West Virginia Department of Environmental Protection, or any successor thereto.

1.4 "Infrastructure Fund" means the West Virginia Infrastructure Fund established in accordance with Section 9 of the Act.

1.5 "Loan" means the loan to be made by the Authority to the Governmental Agency through the purchase of the Notes, as hereinafter defined, pursuant to this Loan Agreement.

1.6 "Local Act" means the resolution, ordinance or other official action of the Governmental Agency required by Section 4.1 hereof, authorizing the issuance of the Notes.

1.7 "Local Statute" means the specific provisions of the Code of West Virginia, 1931, as amended, pursuant to which the Notes are issued.

1.8 "Notes" means the notes to be issued by the Governmental Agency pursuant to the provisions of the Local Statute to evidence the Loan and to be purchased by the Authority, all in accordance with the provisions of this Loan Agreement.

1.9 "Project" means the project hereinabove referred to, to be constructed, being constructed or already constructed by the Governmental Agency in whole or in part with the net proceeds of the Notes.

1.10 "System" means the project owned by the Governmental Agency, of which the Project constitutes all or to which the Project constitutes an improvement, and any improvements thereto hereafter constructed or acquired from any sources whatsoever.

1.11 Additional terms and phrases are defined in this Loan Agreement as they are used.

ARTICLE II

The Project and the System

2.1 The Project shall generally consist of the construction and acquisition of the facilities described in the Application, to be, being or having been constructed in accordance with plans, specifications and designs prepared for the Governmental Agency by the Consulting Engineers, the Authority and Council having found, to the extent applicable, that the Project is consistent with the Act.

2.2 Subject to the terms, conditions and provisions of this Loan Agreement and the Local Act, the Governmental Agency has acquired, or shall do all things necessary to acquire, the proposed site of the Project and shall do, is doing or has done all things necessary to construct the Project in accordance with the plans, specifications and designs prepared for the Governmental Agency by the Consulting Engineers.

2.3 All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Governmental Agency, subject to any mortgage lien or other security interest as is provided for in the Local Statute unless a sale or transfer of all or a portion of said property or any interest therein is approved by the Authority and Council.

2.4 The Governmental Agency agrees that the Authority and the Council and their duly authorized agents shall have the right at all reasonable times to enter upon the Project site and Project facilities and to examine and inspect the same. The Governmental Agency further agrees that the Authority and the Council and their duly authorized agents and representatives shall, prior to, during and after completion of construction and commencement of operation of the Project, have such rights of access to the System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority and the Council with respect to the System pursuant to the pertinent provisions of the Act.

2.5 The Governmental Agency shall keep complete and accurate records of the cost of acquiring the Project site and the costs of constructing, acquiring and installing the Project. The Governmental Agency shall permit the Authority and the Council, acting by and through their directors or their duly authorized agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at any and all reasonable times for the purpose of audit and examination, and the Governmental Agency shall submit to the Authority and the Council such documents and information as they may reasonably require in connection with the construction, acquisition and installation of the Project, the operation and maintenance of the System and the administration of the Loan or of any State and federal grants or other sources of financing for the Project.

2.6 The Governmental Agency agrees that it will permit the Authority and the Council and their agents and representatives to have access to the records of the Governmental Agency pertaining to the operation and maintenance of the System at any reasonable time following completion of construction of the Project and commencement of operation thereof or if the Project is an improvement to an existing system at any reasonable time following commencement of construction.

2.7 The Governmental Agency shall require that each construction contractor furnish a performance bond and a payment bond, each in an amount at least equal to one hundred percent (100%) of the contract price of the portion of the Project covered by the particular contract as security for the faithful performance of such contract and shall verify or have verified such bonds prior to commencement of construction.

2.8 The Governmental Agency shall require that each of its contractors and all subcontractors maintain, during the life of the construction contract, workers' compensation coverage, public liability insurance, property damage insurance and vehicle liability insurance in amounts and on terms satisfactory to the Council and the Authority and shall verify or have verified such insurance prior to commencement of construction. Until the Project facilities are completed and accepted by the Governmental Agency, the Governmental Agency or (at the option of the Governmental Agency) the contractor shall maintain builder's risk insurance (fire and extended coverage) on a one hundred percent (100%) basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Governmental Agency, the prime contractor and all subcontractors, as their interests may appear. If facilities of the System which are detrimentally affected by flooding are or will be located in designated special flood or mudslide-prone areas and if flood insurance is available at a reasonable cost, a flood insurance policy must be obtained by the Governmental Agency on or before the Date of Loan Closing, as hereinafter defined, and maintained so long as any of the Notes is outstanding. Prior to commencing operation of the Project, the Governmental Agency must also obtain, and maintain so long as any of the Notes are outstanding, business interruption insurance if available at a reasonable cost.

2.9 The Governmental Agency shall provide and maintain competent and adequate engineering services satisfactory to the Council and the Authority covering the supervision and inspection of the development and construction of the Project, and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such engineer shall certify to the Authority, the Council and the Governmental Agency at the completion of construction that construction is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies.

2.10 The Governmental Agency shall at all times provide operation and maintenance of the System in compliance with any and all State and federal standards. The Governmental Agency shall employ qualified operating personnel properly certified by the State to operate the System during the entire term of this Loan Agreement.

2.11 The Governmental Agency hereby covenants and agrees to comply with all applicable laws, rules and regulations issued by the Council, the Authority or other State, federal or local bodies in regard to the construction of the Project and operation, maintenance and use of the System.

ARTICLE III

Conditions to Loan; Issuance of Notes

3.1 The agreement of the Authority and Council to make the Loan is subject to the Governmental Agency's fulfillment, to the satisfaction of the Authority and the Council, of each and all of those certain conditions precedent on or before the delivery date for the Notes, which shall be the date established pursuant to Section 3.4 hereof. Said conditions precedent are as follows:

(a) The Governmental Agency shall have performed and satisfied all of the terms and conditions to be performed and satisfied by it in this Loan Agreement;

(b) The Governmental Agency shall have authorized the issuance of and delivery to the Authority of the Notes described in this Article III and in Article IV hereof;

(c) The Governmental Agency shall either have received bids or entered into contracts for the construction of the Project which are in an amount and otherwise compatible with the plan of financing described in the Application; provided that, if the Loan will refund an interim construction financing, the Governmental Agency must either be constructing or have constructed its Project for a cost and as otherwise compatible with the plan of financing described in the Application;

(d) The Governmental Agency shall have obtained all permits required by the laws of the State and the federal government necessary for the construction of the Project;

(e) The Governmental Agency shall have obtained all requisite orders of and approvals from the Public Service Commission of West Virginia (the "PSC") and the Council necessary for the construction of the Project and operation of the System, with all requisite appeal periods having expired without successful appeal, and the Authority and the Council shall have received an opinion of counsel to the Governmental Agency, which may be local counsel to the Governmental Agency, bond counsel or special PSC counsel but must be satisfactory to the Authority and the Council, to such effect;

(f) The Governmental Agency shall have obtained any and all approvals for the issuance of the Notes required by State law, and the Authority and the Council shall have received an opinion of counsel to the Governmental Agency, which may

be local counsel to the Governmental Agency, bond counsel or special PSC counsel but must be satisfactory to the Authority, to such effect;

(g) The net proceeds of the Notes, together with all moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants irrevocably committed therefor, shall be sufficient to pay the costs of construction and acquisition of the Project as set forth in the Application, and the Authority shall have received evidence satisfactory to the Authority of such irrevocably committed funds.

3.2 Subject to the terms and provisions of this Loan Agreement, the rules and regulations promulgated by the Authority, the Council or any other appropriate State agency and any applicable rules, regulations and procedures promulgated from time to time by the federal government, it is hereby agreed that the Authority shall make the Loan to the Governmental Agency and the Governmental Agency shall accept the Loan from the Authority, and in furtherance thereof it is agreed that the Governmental Agency shall sell to the Authority and the Authority shall make the Loan by purchasing the Notes in the principal amount and at the price set forth in Schedule X hereto. The Notes shall have such further terms and provisions as described in Article IV hereof.

3.3 The Loan shall be secured and shall be repaid in the manner hereinafter provided in this Loan Agreement.

3.4 The Notes shall be delivered to the Authority, at the offices of the Authority, on a date designated by the Governmental Agency by written notice to the Authority, which written notice shall be given not less than ten (10) business days prior to the date designated; provided, however, that if the Authority is unable to accept delivery on the date designated, the Notes shall be delivered to the Authority on a date as close as possible to the designated date and mutually agreeable to the Authority, the Council and the Governmental Agency. The date of delivery so designated or agreed upon is hereinafter referred to as the "Date of Loan Closing." Notwithstanding the foregoing, the Date of Loan Closing shall in no event occur more than ninety (90) days after the date of execution of this Loan Agreement by the Authority.

3.5 The Governmental Agency understands and acknowledges that it is one of several governmental agencies which have applied to the Council for loans to finance projects and that the obligation of the Authority to make any such loan is subject to the Council's authorization and the Governmental Agency's fulfilling all of the terms and conditions of this Loan Agreement on or prior to the Date of Loan Closing. The Governmental Agency specifically recognizes that the Authority will not purchase the Notes unless and until sufficient funds are available in the Infrastructure Fund to purchase all the

Notes and that, prior to execution of this Loan Agreement, the Authority may commit to and purchase the notes and/or revenue bonds of other governmental agencies for which it has sufficient funds available.

3.6 The Governmental Agency shall prepay the Notes from the proceeds of any permanent financing it obtains for the Project.

ARTICLE IV

Notes; Security for Loan; Repayment of Loan; Interest on Loan; Fees and Charges

4.1 The Governmental Agency shall, as one of the conditions of the Authority to make the Loan, authorize the issuance of and issue the Notes pursuant to an official action of the Governmental Agency in accordance with the Local Statute, which shall, as enacted or adopted, contain provisions and covenants in substantially the form as follows, unless the specific provision or covenant is modified or waived by the Council:

(a) The Governmental Agency hereby pledges the following sources of funds as security for the Notes:

(i) Proceeds of any grants (other than Infrastructure Fund grants) received by the Governmental Agency for the System, and

(ii) Proceeds of any revenue bonds, refunding bonds, bond anticipation notes or other obligations of the Governmental Agency, issued subsequent to the issuance of the Notes.

In the event any grants (other than Infrastructure Fund grants) are received by the Governmental Agency, or any revenue bonds, refunding bonds, bond anticipation notes or other obligations of the Governmental Agency are issued, the Governmental Agency shall pay the entire outstanding principal of and interest, if any, accrued to the maturity date of the Notes, from such sources.

(b) The Governmental Agency hereby covenants substantially as follows:

(i) That the Governmental Agency shall complete or has completed the Project and will operate and maintain the System in good condition;

(ii) That the Governmental Agency recognizes that the Authority may by proper legal action compel the performance of the duties of the Governmental Agency under the Local Act, and shall also have, in the event of a default in the payment of principal of and interest, if any, on the Notes, the right to obtain the appointment of a receiver to administer the System or construction of the Project, or both, as provided by law;

(iii) That, to the extent legally allowable, the Governmental Agency will not grant any franchise to provide any services which would compete with the System;

(iv) That the Governmental Agency shall annually cause the records of the System to be audited by an independent certified public accountant or independent public accountant and shall submit the report of said audit to the Authority and the Council, which report shall include a statement that notes whether the results of tests disclosed instances of noncompliance that are required to be reported under government auditing standards and, if they are, describes the instances of noncompliance and the audited financial statements shall include a statement that notes whether the Governmental Agency's revenues are adequate to meet its operation and maintenance expenses and debt service requirements;

(v) That for wastewater systems, to the extent authorized by the laws of the State and the rules and regulations of the PSC, prospective users of the System shall be required to connect thereto;

(vi) That the proceeds of the Notes must be deposited in a notes project fund, which, except as otherwise agreed to in writing by the Authority, shall be held separate and apart from all other funds of the Governmental Agency and on which the owners of the Notes shall have a lien until such proceeds are applied to the payment of the costs of the Project or to the payment of bond anticipation notes or other interim financing of such Governmental Agency, the proceeds of which were used to finance the costs of the Project;

(vii) That, as long as the Authority is the owner of any of the Notes, the Governmental Agency may not redeem any Notes without the written consent of the Authority and the Council and otherwise in compliance with this Loan Agreement;

(viii) That, unless it qualifies for an exception to the provisions of Section 148 of the Internal Revenue Code of 1986, as amended, (the "Code"), which exception shall be set forth in an opinion of bond counsel, or, at the option of the Authority, the loan is not tax-exempt, the Governmental Agency will furnish to the Authority, annually, at such time as it is required to perform its rebate calculations under the Code, a certificate with respect to its rebate calculations or to the effect that no rebate is payable, and, at any time, any additional information requested by the Authority;

(ix) That the Governmental Agency shall take any and all action, or shall refrain from taking any action regarding the use of the proceeds of the Notes, as shall be deemed necessary by the Authority to maintain the exclusion from gross income for federal income tax purposes of interest on the State's general obligation bonds issued to provide moneys for the Infrastructure Fund, or any bonds secured by the Notes;

(x) That the Governmental Agency shall furnish to the Authority such information with respect to earnings on all funds constituting "gross proceeds" of the Notes (as that term is defined in the Code) from time to time as the Authority may request, and

(xi) That the Governmental Agency shall not issue any bonds, notes or other obligations payable from the revenues of the System unless it has received the written consent of the Authority and the Council.

The Governmental Agency hereby represents and warrants that the Local Act has been or shall be duly adopted in compliance with all necessary corporate and other action and in accordance with applicable provisions of law. All legal matters incident to the authorization, issuance, sale and delivery of the Notes shall be approved without qualification by recognized bond counsel acceptable to the Authority in substantially the form of legal opinion attached hereto as Exhibit A.

4.2 The principal of and interest, if any, on the Loan shall be repaid by the Governmental Agency on the days and in the years as provided in Schedule X and Schedule Y attached hereto.

4.3 The Loan shall bear interest, if any, from the dates and at the rate or rates per annum set forth on Schedule X hereto. In no event shall the interest rate on or the net interest cost of the Notes exceed any statutory limitation with regard thereto.

4.4 The Notes shall be delivered to the Authority in fully registered form, transferable and exchangeable as provided in the Local Act at the expense of the Governmental Agency. Anything to the contrary herein notwithstanding, the Notes may be issued in one or more series, as reflected by Schedule X hereto.

ARTICLE V

Certain Covenants of the Governmental Agency; Imposition and Collection of User Charges; Payments To Be Made by Governmental Agency to the Authority

5.1 The Governmental Agency hereby irrevocably covenants and agrees to comply with all of the terms, conditions and requirements of this Loan Agreement and the Local Act.

5.2 In the event the Governmental Agency defaults in any payment to the Authority, the amount of such default shall bear interest at the annual rate of 3% on the installment of the Loan next due, from the date of the default until the date of the payment thereof, unless waived by the Authority.

5.3 The Governmental Agency hereby irrevocably covenants and agrees with the Authority that, in the event of any default hereunder by the Governmental Agency, the Authority may exercise any or all of the rights and powers granted under the Act and State law, including without limitation the right to an appointment of a receiver.

ARTICLE VI

Other Agreements of the Governmental Agency

6.1 The Governmental Agency hereby warrants and represents that all information provided to the Authority and the Council in this Loan Agreement, in the Application or in any other application or documentation with respect to financing the costs of the Project was at the time, and now is, true, correct and complete, and such information does not omit any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. Prior to the Authority's making the Loan and receiving the Notes, the Authority and the Council shall have the right to cancel all or any of their obligations under this Loan Agreement if (a) any representation made to the Authority and the Council by the Governmental Agency in connection with the Loan shall be incorrect or incomplete in any material respect or (b) the Governmental Agency has violated any commitment made by it in its Application or in any supporting documentation or has violated any of the terms of this Loan Agreement.

6.2 The Governmental Agency hereby covenants that it will rebate any amounts required by Section 148 of the Code, if applicable, and will take all steps necessary to make any such rebates. In the event the Governmental Agency fails to make any such rebates as required, then the Governmental Agency shall pay any and all penalties, obtain a waiver from the Internal Revenue Service and take any other actions necessary or desirable to preserve the exclusion from gross income for federal income tax purposes of interest on the Notes.

6.3 Notwithstanding Section 6.2, the Authority may at any time, in its sole discretion, cause the rebate calculations prepared by or on behalf of the Governmental Agency to be monitored or cause the rebate calculations for the Governmental Agency to be prepared, in either case at the expense of the Governmental Agency.

6.4 The Governmental Agency hereby agrees to give the Authority and the Council prior written notice of the issuance by it of any other obligations to be used to pay costs of the Project, payable from the revenues of the System or from any grants for the Project or otherwise related to the Project or the System.

ARTICLE VII

Miscellaneous

7.1 Additional definitions, additional terms and provisions of the Loan and additional covenants and agreements of the Governmental Agency may be set forth in Schedule Z attached hereto and incorporated herein by reference, with the same effect as if contained in the text of this Loan Agreement.

7.2 The Authority shall take all actions required by the Council in making and enforcing this Loan Agreement and the provisions of the Note.

7.3 If any provision of this Loan Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Loan Agreement, and this Loan Agreement shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

7.4 This Loan Agreement may be executed in one or more counterparts, any of which shall be regarded for all purposes as an original and all of which constitute but one and the same instrument. Each party agrees that it will execute any and all documents or other instruments and take such other actions as may be necessary to give effect to the terms of this Loan Agreement.

7.5 No waiver by either party of any term or condition of this Loan Agreement shall be deemed or construed as a waiver of any other terms or conditions, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different section, subsection, paragraph, clause, phrase or other provision of this Loan Agreement.

7.6 This Loan Agreement supersedes all prior negotiations, representations and agreements between the parties hereto relating to the Loan and constitutes the entire agreement between the parties hereto in respect thereof.

7.7 By execution and delivery of this Loan Agreement, notwithstanding the date hereof, the Governmental Agency specifically recognizes that it is hereby agreeing to sell its Notes to the Authority and that such obligation may be specifically enforced or subject to a similar equitable remedy by the Authority.

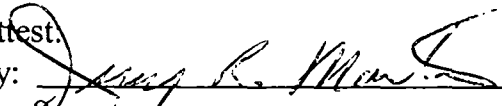
7.8 This Loan Agreement shall terminate upon the earlier of:

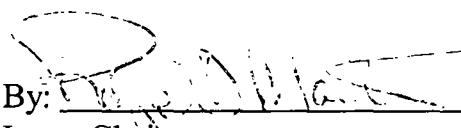
- (i) the end of ninety (90) days after the date of execution hereof by the Authority or such later date as is agreed to in writing by the Council if the Governmental Agency has failed to deliver the Notes to the Authority;
- (ii) termination by the Authority and the Council pursuant to Section 6.1 hereof; or
- (iii) payment in full of the principal of and interest, if any, on the Loan and of any fees and charges owed by the Governmental Agency to the Authority, acting on behalf of the Council.

IN WITNESS WHEREOF, the parties hereto have caused this Loan Agreement to be executed by their respective duly authorized officers as of the date executed below by the Authority.

LUBECK PUBLIC SERVICE DISTRICT

(SEAL)


Attest: 
By: _____
Its: Secretary

By: 
Its: Chairperson
Date: September 27, 2005

WEST VIRGINIA WATER DEVELOPMENT
AUTHORITY

(SEAL)

Attest: _____
By: Barbara B Meadows
Its: Secretary-Treasurer

By: 
Its: Director
Date: September 27, 2005

017542/00301
08/31/05

EXHIBIT A

OPINION OF BOND COUNSEL FOR GOVERNMENTAL AGENCY

[To Be Dated as of Date of Loan Closing]

West Virginia Infrastructure and
Jobs Development Council
300 Summers Street, Suite 980
Charleston, West Virginia 25301

West Virginia Water Development Authority
180 Association Drive
Charleston, West Virginia 25311

Ladies and Gentlemen:

We are bond counsel to _____ (the "Governmental Agency"), a _____.

We have examined a certified copy of proceedings and other papers relating to the authorization of (i) a loan agreement dated _____, _____, including all schedules and exhibits attached thereto (the "Loan Agreement"), between the Governmental Agency and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), and (ii) the issue of a series of notes of the Governmental Agency, dated _____, _____ (the "Notes"), to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Notes are issued in the principal amount of \$_____, in the form of one note, fully registered as to principal to the Authority, with no interest, and the entire outstanding principal of the Notes shall be payable on _____, _____, as set forth in Schedule Y incorporated in and made a part of the Notes.

The Notes are issued for the purposes of (i) _____, and (ii) paying certain issuance and other costs in connection therewith.

We have also examined the applicable provisions of _____ of the Code of West Virginia, 1931, as amended (the "Local Statute"), and the note _____ duly adopted or enacted by the Governmental Agency on _____ (the "Local Act"), pursuant to and under which Local Statute and Local Act the Notes are authorized and

issued, and the Loan Agreement that has been undertaken. The Notes are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Local Act and the Loan Agreement.

Based upon the foregoing and upon our examination of such other documents as we have deemed necessary, we are of the opinion as follows:

1. The Loan Agreement has been duly authorized by and executed on behalf of the Governmental Agency and is a valid and binding special obligation of the Governmental Agency, enforceable in accordance with the terms thereof.

2. The Loan Agreement inures to the benefit of the Authority and the Council and cannot be amended so as to affect adversely the rights of the Authority or the Council or diminish the obligations of the Governmental Agency without the consent of the Authority and the Council.

3. The Governmental Agency is a duly organized and validly existing _____, with full power and authority to construct and acquire the Project and to operate and maintain the System, to adopt or enact the Local Act and to issue and sell the Notes, all under the Local Statute and other applicable provisions of law.

4. The Local Act and all other necessary orders and resolutions have been legally and effectively adopted or enacted by the Governmental Agency and constitute valid and binding obligations of the Governmental Agency, enforceable against the Governmental Agency in accordance with their terms. The Local Act contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

5. The Notes have been duly authorized, issued, executed and delivered by the Governmental Agency to the Authority and are valid and legally enforceable special obligations of the Governmental Agency, payable from and secured by a first lien on the proceeds of any grants received by the Governmental Agency for the System, proceeds of any revenue bonds, refunding bonds, bond anticipation notes or other obligations of the Governmental Agency, issued subsequent to the issuance of the Notes, all in accordance with the terms of the Notes and the Local Act.

6. [If required, the Notes are, by statute, exempt _____, and under existing statutes and court decisions of the United States of America, as presently written and applied, the interest on the Notes is excludable from the gross income of the recipients thereof for federal income tax purposes.]

No opinion is given herein as to the effect upon enforceability of the Notes of bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights or in the exercise of judicial discretion in appropriate cases.

We have examined executed and authenticated Note numbered R-1, and in our opinion the form of said Note and its execution and authentication are regular and proper.

Very truly yours,

SCHEDULE X

DESCRIPTION OF NOTES

Principal Amount of Notes \$6,278,679

Purchase Price of Notes \$6,278,679

The Notes shall bear no interest. The principal of the Notes shall be payable in annual installments of One Hundred Dollars (\$100) on June 1, 2006, June 1, 2007, June 1, 2008 and June 1, 2009, and with the entire outstanding principal amount payable in full on March 1, 2010.

The Governmental Agency shall submit its payments to the Commission which will make payment to the Authority at such address as is given to the Commission in writing by the Authority.

The Notes are fully registered in the name of the Authority as to principal and the Notes shall grant the Authority a first lien on the proceeds of any grants for the System (other than Infrastructure Fund grants), and/or proceeds of any revenue bonds, refunding bonds, bond anticipation notes or other obligations of the Governmental Agency, issued subsequent to the issuance of the Notes.

The Governmental Agency may prepay the Notes in part or in whole at any time at the price of par but only with the Council's written consent. The Governmental Agency shall prepay the Notes from the proceeds of any permanent financing it obtains for the Project. The Governmental Agency shall request approval from the Authority and Council in writing of any proposed debt which will be issued by the Governmental Agency, which written request must be filed at least 60 days prior to the intended date of issuance.

As of the date of the Loan Agreement, the Notes are junior and subordinate to the following obligations of the Governmental Agency:

1. Sewerage System Revenue Bonds, Series 1999 A (West Virginia SRF Program), dated March 9, 1999, issued in the principal amount of \$7,950,000.
2. Sewerage System Revenue Bonds, Series 1999 B (West Virginia Infrastructure Fund), dated March 9, 1999, issued in the principal amount of \$2,000,000.
3. Sewer Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), dated September 27, 2005, issued in the principal amount of \$7,879,443.
4. Sewer Revenue Bonds, Series 2005 B (West Virginia Infrastructure Fund), dated September 27, 2005, issued in the principal amount of \$2,411,178.

SCHEDULE Y

DEBT SERVICE SCHEDULE

\$6,278,679

0% Interest

Payment Date	Principal Due	Interest	Total
--------------	---------------	----------	-------

June 1, 2006	\$100	0%	\$100
June 1, 2007	\$100	0%	\$100
June 1, 2008	\$100	0%	\$100
June 1, 2009	\$100	0%	\$100
March 1, 2010	\$6,278,279	0%	\$6,278,279

LUBECK PUBLIC SERVICE DISTRICT

2.4

**Sewer Revenue Bonds, Series 2005 A
(West Virginia Infrastructure Fund),
Sewer Revenue Bonds, Series 2005 B
(West Virginia Infrastructure Fund)
and
Sewerage System Bond Anticipation Notes, Series 2005
(West Virginia Infrastructure Fund)**

BOND AND NOTE RESOLUTION

Table of Contents

Subject	Page
----------------	-------------

ARTICLE I STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01	Authority for this Resolution	1
Section 1.02	Findings	2
Section 1.03	Bond Legislation Constitutes Contract	4
Section 1.04	Definitions	5

ARTICLE II AUTHORIZATION OF REFUNDING OF PRIOR NOTES

Section 2.01	Authorization of Refunding of Prior Notes	14
--------------	---	----

ARTICLE III

AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS; AUTHORIZATION AND EXECUTION OF LOAN AGREEMENTS

Section 3.01	Authorization of Bonds	15
Section 3.02	Terms of Bonds	15
Section 3.03	Execution of Bonds	16
Section 3.04	Authentication and Registration	16
Section 3.05	Negotiability, Transfer and Registration	16
Section 3.06	Bonds Mutilated, Destroyed, Stolen or Lost	17
Section 3.07	Bonds Not to be Indebtedness of the Issuer	17
Section 3.08	Bonds Secured by Pledge of Net Revenues; Lien Position with Respect to Prior Bonds	18
Section 3.09	Delivery of Bonds	18
Section 3.10	Form of Bonds	18
	FORM OF SERIES 2005 A BOND	19
	FORM OF SERIES 2005 B BOND	26
Section 3.11	Sale of Bonds; Approval and Ratification of Execution of Loan Agreements	33
Section 3.12	Filing of Amended Schedule	33

ARTICLE IV

AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF NOTES; AUTHORIZATION AND EXECUTION OF LOAN AGREEMENT

Section 4.01	Authorization of Notes	34
Section 4.02	Terms of Notes	34
Section 4.03	Execution of Notes	34
Section 4.04	Authentication and Registration	35
Section 4.05	Negotiability, Transfer and Registration	35
Section 4.06	Notes Mutilated, Destroyed, Stolen or Lost	35
Section 4.07	Pledge of Security for the Notes	36
Section 4.08	Notes Not to be Indebtedness of Issuer	36
Section 4.09	Covenants of Resolution Applicable to Notes	36
Section 4.10	Form of Notes	36
	FORM OF NOTE	37
Section 4.11	Sales of Notes; Approval and Ratification of Execution of Loan Agreement	43

Section 4.12	Establishment of Notes Payment Fund	43
Section 4.13	Prohibition of Other Debt	43

ARTICLE V

FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

Section 5.01	Establishment of Funds and Accounts with Depository Bank	44
Section 5.02	Establishment of Funds and Accounts with Commission	44
Section 5.03	System Revenues; Flow of Funds	44

ARTICLE VI

EXCHANGE OF BONDS AND NOTES FOR PRIOR NOTES

Section 6.01	Exchange of Bonds and Notes for the Prior Notes	49
--------------	---	----

ARTICLE VII

ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01	General Covenants of the Issuer	50
Section 7.02	Bonds not to be Indebtedness of the Issuer	50
Section 7.03	Bonds Secured by Pledge of Net Revenues; Lien Position with Respect to Prior Bonds	50
Section 7.04	Initial Schedule of Rates and Charges	50
Section 7.05	Sale of the System	51
Section 7.06	Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances	52
Section 7.07	Parity Bonds	52
Section 7.08	Books; Records and Audit	54
Section 7.09	Rates	55
Section 7.10	Operating Budget and Monthly Financial Report	57
Section 7.11	Engineering Services and Operating Personnel	57
Section 7.12	No Competing Franchise	58
Section 7.13	Enforcement of Collections	58
Section 7.14	No Free Services	58
Section 7.15	Insurance and Construction Bonds	59
Section 7.16	Mandatory Connections	60
Section 7.17	Completion of Project; Permits and Orders	61
Section 7.18	[Reserved]	61
Section 7.19	Statutory Mortgage Lien	61
Section 7.20	Compliance with Loan Agreements and Law	61

Section 7.21	Securities Laws Compliance	61
--------------	----------------------------	----

ARTICLE VIII INVESTMENT OF FUNDS

Section 8.01	Investment of Funds	63
Section 8.02	Certificate as to Use of Proceeds	63

ARTICLE IX DEFAULT AND REMEDIES

Section 9.01	Events of Default	65
Section 9.02	Remedies	65
Section 9.03	Appointment of Receiver	66

ARTICLE X PAYMENT OF BONDS AND NOTES

Section 10.01	Payment of Bonds	68
Section 10.02	Payment of Notes	68

ARTICLE XI MISCELLANEOUS

Section 11.01	Amendment or Modification of Bond Legislation	69
Section 11.02	Bond Legislation Constitutes Contract	69
Section 11.03	Severability of Invalid Provisions	69
Section 11.04	Headings, Etc.	69
Section 11.05	Conflicting Provisions Repealed; Prior Resolution	69
Section 11.06	Covenant of Due Procedure, Etc.	70
Section 11.07	Effective Date	70
	SIGNATURES	70
	CERTIFICATION	71

LUBECK PUBLIC SERVICE DISTRICT

RESOLUTION AUTHORIZING THE REFUNDING OF THE SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 1999 (WEST VIRGINIA INFRASTRUCTURE FUND) OF LUBECK PUBLIC SERVICE DISTRICT AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE DISTRICT OF NOT MORE THAN \$7,879,443 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2005 A (WEST VIRGINIA INFRASTRUCTURE FUND); NOT MORE THAN \$2,411,178 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2005 B (WEST VIRGINIA INFRASTRUCTURE FUND); AND NOT MORE THAN \$6,278,679 IN AGGREGATE PRINCIPAL AMOUNT OF SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2005 (WEST VIRGINIA INFRASTRUCTURE FUND); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING THE LOAN AGREEMENTS RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

BE IT RESOLVED BY THE PUBLIC SERVICE BOARD OF LUBECK PUBLIC SERVICE DISTRICT:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Resolution. This Resolution (together with any order or resolution supplemental hereto or amendatory hereof, the "Bond Legislation") is adopted pursuant to the provisions of Chapter 16, Article 13A and Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended (collectively, the "Act"), and other applicable provisions of law.

Section 1.02. Findings. It is hereby found, determined and declared that:

A. Lubeck Public Service District (the "Issuer") is a public service district, a public corporation and political subdivision of the State of West Virginia in Wood County of said State.

B. The Issuer presently owns and operates a public sewerage system. However, for the health, safety, advantage, convenience and welfare of the inhabitants of the Issuer, the Issuer has heretofore acquired and constructed certain improvements and extensions to the existing public sewerage system of the Issuer, consisting of approximately 40 miles of sewer collection lines and a 1.5 million gallons per day wastewater treatment plant, together with all appurtenant facilities (collectively, the "Project") (the existing public sewerage facilities of the Issuer, the Project and any further improvements or extensions thereto are herein called the "System"), in accordance with the plans and specifications prepared by the Consulting Engineers and filed with the Issuer.

C. The Issuer has heretofore temporarily financed a portion of the costs of the acquisition and construction of the Project through the issuance of its Sewerage System Bond Anticipation Notes, Series 1999 (West Virginia Infrastructure Fund), dated March 9, 1999, in the original aggregate principal amount of \$16,550,000, of which \$16,549,300 is presently outstanding (the "Prior Notes").

D. Pursuant to the Act, the Issuer is authorized and empowered to issue refunding revenue bonds for the purpose of refunding, retiring or refinancing the Prior Notes. The Issuer hereby determines that it is necessary and desirable to refund the Prior Notes.

E. The Issuer intends to refund the Prior Notes through the issuance of its revenue bonds and notes to the West Virginia Water Development Authority (the "Authority"), which administers the West Virginia Infrastructure Fund (the "Infrastructure Fund") for the West Virginia Infrastructure and Jobs Development Council (the "Council").

F. It is deemed necessary for the Issuer to issue its (i) Sewer Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), in the aggregate principal amount of not more than \$7,879,443 (the "Series 2005 A Bonds"); (ii) Sewer Revenue Bonds, Series 2005 B (West Virginia Infrastructure Fund), in the aggregate principal amount of not more than \$2,411,178 (the "Series 2005 B Bonds"); and (iii) Sewerage System Bond Anticipation Notes, Series 2005 (West Virginia Infrastructure Fund), in the aggregate principal amount of not more than \$6,278,679 (the "Series 2005 Notes" or the "Notes"), to refund the Prior Notes and pay all costs relating thereto. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest, if any, upon the Series 2005 Bonds prior to and during acquisition and construction of the Project and for a

period not exceeding six (6) months after completion of acquisition and construction of the Project; amounts which may be deposited in the respective Reserve Accounts (as hereinafter defined); costs of refunding the Prior Notes; engineering and legal expenses; expenses for estimates of costs and revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise; administrative expense, commitment fees, fees and expenses of the Authority, discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2005 Bonds and the Series 2005 Notes and such other expenses as may be necessary or incidental to the financing herein authorized, the cost of acquisition and construction of the Project, and the performance of the things herein required or permitted, in connection with any thereof; provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Series 2005 Bonds or the repayment of indebtedness incurred by the Issuer for such purposes shall be deemed Costs of the Project, as hereinafter defined.

G. The period of usefulness of the System after the refunding of the Prior Notes is not less than 40 years.

H. It is in the best interests of the Issuer that the Series 2005 Bonds and the Series 2005 Notes be sold to the Authority pursuant to the terms and provisions of the respective loan agreements by and between the Issuer and the Authority, on behalf of the Council, in forms satisfactory to the Issuer, the Authority and the Council (collectively, the "Loan Agreements"), all of which are approved hereby if not previously approved by resolution of the Issuer.

I. Upon the refunding of the Prior Notes, there are outstanding obligations of the Issuer which will rank on a parity with the Series 2005 Bonds as to liens, pledge and source of and security for payment, being the Sewerage System Revenue Bonds, Series 1999 A (West Virginia SRF Program), dated March 9, 1999, issued in the original aggregate principal amount of \$7,950,000 (the "Series 1999 A Bonds"); and Sewerage System Revenue Bonds, Series 1999 B (West Virginia Infrastructure Fund), dated March 9, 1999, issued in the original aggregate principal amount of \$2,000,000 (the "Series 1999 B Bonds") (collectively, the "Prior Bonds").

Prior to the issuance of the Series 2005 Bonds, the Issuer will obtain (i) the certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Prior Bonds are met; and (ii) the written consent of the Registered Owners of the Prior Bonds to the issuance of the Series 2005 Bonds on a parity with the Prior Bonds. Other than the Prior Bonds, there are no other outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System. The Issuer is in compliance with all the covenants of the Prior Bonds and the Prior Resolution.

The Series 2005 Notes shall be issued junior and subordinate to the Prior Bonds and the Series 2005 Bonds as to liens, pledge and source of and security for payment.

J. The estimated revenues to be derived in each year following the refunding of the Prior Notes from the operation of the System will be sufficient to pay all Operating Expenses of the System and the principal of and interest on the Series 2005 Bonds and the Prior Bonds, and all funds and accounts and other payments provided for herein, all as such terms are hereinafter defined.

K. The Issuer has complied with all requirements of West Virginia law and the Loan Agreements relating to authorization of the acquisition, construction and operation of the Project and the System and issuance of the Series 2005 Bonds and the Series 2005 Notes, or will have so complied prior to issuance of any thereof, including, among other things and without limitation, the approval of the financing hereof by the Council and the approval of this financing and necessary user rates and charges described herein from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which will either have expired prior to the issuance of the Series 2005 Bonds and the Series 2005 Notes or such final order will not be subject to appeal or rehearing.

L. The Project has been approved by the Council as required under Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2005 Bonds by those who shall be the Registered Owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Registered Owners, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the Registered Owners of any and all of such Series 2005 Bonds, all which shall be of equal rank and without preference, priority or distinction between any one Bond of a series and any other Bonds of the same series, by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

In consideration of the acceptance of the Series 2005 Notes by those who shall be the Registered Owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Registered Owners, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the Registered Owners of any and all of such Series 2005 Notes, all which shall be of equal rank and without preference, priority or distinction between any one Note of a series and any other Notes of the same series, by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

Section 1.04. Definitions. The following terms shall have the following meanings herein unless the context expressly requires otherwise:

"Act" means, collectively, Chapter 16, Article 13A and Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended and in effect on the date of adoption hereof.

"Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser and Registered Owner of the Series 2005 Bonds and the Series 2005 Notes, or any other agency of the State of West Virginia that succeeds to the functions of the Authority.

"Authorized Officer" means the Chairperson of the Governing Body of the Issuer or any temporary Chairperson duly selected by the Governing Body.

"Bond Legislation," "Resolution," "Bond and Note Resolution" or "Local Act" means this Bond and Note Resolution and all orders and resolutions supplemental hereto or amendatory hereof.

"Bond Registrar" means the bank or other entity to be designated as such for the Series 2005 Bonds in the Supplemental Resolution and its successors and assigns.

"Bond Year" means the 12-month period beginning on the anniversary of the Closing Date in each year and ending on the day prior to the anniversary date of the Closing Date in the following year, except that the first Bond Year shall begin on the Closing Date.

"Bonds" means, collectively, the Series 2005 Bonds, the Prior Bonds and, where appropriate, any bonds on a parity therewith subsequently authorized to be issued hereunder or by another resolution of the Issuer.

"Chairperson" means the Chairperson of the Governing Body of the Issuer.

"Closing Date" means the date upon which there is an exchange of the Series 2005 Bonds and the Series 2005 Notes for the Prior Notes.

"Code" means the Internal Revenue Code of 1986, as amended, and the Regulations.

"Commission" means the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia that succeeds to the functions of the Commission.

"Consulting Engineers" means Burgess & Niple, Inc., Parkersburg, West Virginia, or any qualified engineer or firm of engineers, licensed by the State, that shall at any time hereafter be procured by the Issuer as Consulting Engineers for the System or portion thereof, in accordance with Chapter 5G, Article 1 of the West Virginia Code of 1931, as amended.

"Costs" or "Costs of the Project" means those costs described in Section 1.02F hereof to be a part of the cost of refunding the Prior Notes.

"Council" means the West Virginia Infrastructure and Jobs Development Council or any other agency of the State of West Virginia that succeeds to the functions of the Council.

"Depository Bank" means the bank designated as such in the Supplemental Resolution, and its successors and assigns, which shall be a member of FDIC.

"FDIC" means the Federal Deposit Insurance Corporation and any successor to the functions of the FDIC.

"Fiscal Year" means each 12-month period beginning on July 1 and ending on the succeeding June 30.

"Governing Body" or "Board" means the public service board of the Issuer, as it may now or hereafter be constituted.

"Government Obligations" means direct obligations of, or obligations the timely payment of the principal of and interest on which is guaranteed by, the United States of America.

"Grants" means all monies received by the Issuer on account of any Grant or Grants for the Project.

"Gross Revenues" means the aggregate gross operating and non-operating revenues of the System, as hereinafter defined, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts; provided, that "Gross Revenues" does not include any gains from the sale or other disposition of, or from any increase in the value of, capital assets (including Qualified Investments, as hereinafter defined) or any Tap Fees, as hereinafter defined.

"Herein," "hereto" and similar words shall refer to this entire Bond Legislation.

"Independent Certified Public Accountants" means any certified public accountant or firm of certified public accountants that shall at any time hereafter be retained by the Issuer to prepare an independent annual or special audit of the accounts of the System or for any other purpose except keeping the accounts of the System in the normal operation of its business and affairs.

"Investment Property" means

(A) any security (within the meaning of Section 165(g)(2)(A) or (B) of the Code),

(B) any obligation,

(C) any annuity contract,

(D) any investment-type property, or

(E) in the case of a bond other than a private activity bond, any residential rental property for family units which is not located within the jurisdiction of the Issuer and which is not acquired to implement a court ordered or approved housing desegregation plan.

Except as provided in the following sentence, the term "Investment Property" does not include any tax-exempt bond. With respect to an issue other than an issue a part of which is a specified private activity bond (as defined in section 57(a)(5)(C) of the Code), the term "Investment Property" includes a specified private activity bond (as so defined).

"Issuer" means Lubeck Public Service District, a public service district, public corporation and political subdivision of the State of West Virginia in Wood County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

"Loan Agreements" or "Loan Agreement" means, collectively or individually, the Loan Agreements for each series of the Series 2005 Bonds and the Series 2005 Notes by and between the Issuer and the Authority, on behalf of the Council, the forms of which shall be approved, and the execution and delivery by the Issuer authorized and directed or ratified, by the Supplemental Resolution.

"Net Proceeds" means the face amount of the Series 2005 Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the respective Series 2005 Bonds Reserve Accounts. For purposes of the Private Business Use limitations set forth herein, the term Net Proceeds shall include any amounts

resulting from the investment of proceeds of the Series 2005 Bonds, without regard to whether or not such investment is made in tax-exempt obligations.

"Net Revenues" means the balance of the Gross Revenues, remaining after deduction of Operating Expenses, as hereinafter defined.

"Nonpurpose Investment" means any Investment Property as defined in Section 148(b) of the Code, that is not a purpose investment.

"Note Registrar" means the bank or other entity to be designated as such for the Series 2005 Notes in the Supplemental Resolution and its successors and assigns.

"Operating Expenses" means the reasonable, proper and necessary costs of repair, maintenance and operation of the System and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses, other than those capitalized as part of the costs, fees and expenses of the Authority, fiscal agents, the Depository Bank, the Registrar and the Paying Agent (all as herein defined), other than those capitalized as part of the costs, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that "Operating Expenses" does not include payments on account of the principal of or redemption premium, if any, or interest on the Bonds, charges for depreciation, losses from the sale or other disposition of, or from any decrease in the value of, capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

"Outstanding," when used with reference to Bonds or Notes and as of any particular date, describes all Bonds or Notes theretofore and thereupon being authenticated and delivered, except (i) any Bond or Note cancelled by the Registrar at or prior to said date; (ii) any Bond or Note for the payment of which monies, equal to its principal amount and redemption premium, if applicable, with interest to the date of maturity or redemption shall be in trust hereunder and set aside for such payment (whether upon or prior to maturity); (iii) any Bond or Note deemed to have been paid as provided in Article X hereof; and (iv) for purposes of consents or other action by a specified percentage of Registered Owners, any Bond or Note registered to the Issuer.

"Parity Bonds" means additional Bonds issued under the provisions and within the limitations prescribed by Section 7.07 hereof.

"Paying Agent" means the Commission or other entity designated as such for the Series 2005 Bonds and the Series 2005 Notes in the Supplemental Resolution with the written consent of the Authority and the Council.

"Prior Bonds" means collectively, the Issuer's Sewerage System Revenue Bonds, Series 1999 A (West Virginia SRF Program), and Sewerage System Revenue Bonds, Series 1999 B (West Virginia Infrastructure Fund), as described in Section 1.02I hereof.

"Prior Notes" means the Issuer's Sewerage System Bond Anticipation Notes, Series 1999 (West Virginia Infrastructure Fund), as described in Section 1.02C hereof.

"Prior Resolution" means the resolution adopted by the Issuer on February 25, 1999, as supplemented by the supplemental resolution of the Issuer, authorizing the issuance of the Prior Bonds.

"Private Business Use" means use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit; provided that use as a member of the general public shall not be taken into account.

"Project" means the Project as described in Section 1.02B hereof.

"PSC" means the Public Service Commission of West Virginia and any successor to the functions thereof.

"PSC Order" means, collectively, the final order or orders of the PSC, approving the refunding of the Prior Notes through the issuance of the Series 2005 Bonds and the Series 2005 Notes and the rates of the System.

"Qualified Investments" means and includes any of the following:

- (a) Government Obligations;
- (b) Government Obligations which have been stripped of their unmatured interest coupons, interest coupons stripped from Government Obligations, and receipts or certificates evidencing payments from Government Obligations or interest coupons stripped from Government Obligations;
- (c) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Government National Mortgage Association; Tennessee Valley Authority; or Washington Metropolitan Area Transit Authority;
- (d) Any bond, debenture, note, participation certificate or other similar

obligations issued by the Federal National Mortgage Association to the extent such obligation is guaranteed by the Government National Mortgage Association or issued by any other federal agency and backed by the full faith and credit of the United States of America;

(e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC or Federal Savings and Loan Insurance Corporation, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;

(f) Money market funds or similar funds whose only assets are investments of the type described in paragraphs (a) through (e) above;

(g) Repurchase agreements or similar banking arrangements, fully secured by investments of the types described in paragraphs (a) through (e) above or fully insured by the FDIC, with member banks of the Federal Reserve system or banks or national banking associations which are members of FDIC or with government bond dealers recognized as primary dealers by the Federal Reserve Bank of New York, provided, that said investments securing said repurchase agreements either must mature as nearly as practicable coincident with the maturity of said repurchase agreements or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said repurchase agreements, and provided further that the holder of such repurchase agreement shall have a prior perfected security interest in the collateral therefor; must have (or its agent must have) possession of such collateral; and such collateral must be free of all claims by third parties;

(h) The West Virginia "consolidated fund" managed by the West Virginia Investment Management Board pursuant to Chapter 12, Article 6 of the Code of West Virginia, 1931, as amended; and

(i) Obligations of states or political subdivisions or agencies thereof, the interest on which is excluded from gross income for federal income tax purposes, and which are rated at least "A" by Moody's Investors Service, Inc. or Standard & Poor's Corporation.

"Registered Owner" or any similar term whenever used herein with respect to an outstanding Bond or Note, means the person in whose name such Bond or Note is registered.

"Registrar" means the Bond Registrar or the Note Registrar, designated in the Supplemental Resolution.

"Regulations" means temporary and permanent regulations promulgated under the Code or any predecessor to the Code.

"Renewal and Replacement Fund" means the Renewal and Replacement Fund established by the Prior Resolution and continued hereby.

"Reserve Accounts" means, collectively, the respective reserve accounts established for the Series 2005 Bonds and the Prior Bonds.

"Reserve Requirement" means, collectively, the respective amounts required to be on deposit in the Reserve Accounts for the Series 2005 Bonds and the Prior Bonds.

"Revenue Fund" means the Revenue Fund previously established by the Prior Resolution and continued hereby.

"Secretary" means the Secretary of the Governing Body of the Issuer.

"Series 2005 Bonds" means, collectively, the Series 2005 A Bonds and the Series 2005 B Bonds of the Issuer, authorized by this Resolution.

"Series 2005 A Bonds" means the Sewer Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), of the Issuer, authorized by this Resolution.

"Series 2005 A Bonds Reserve Account" means the Series 2005 A Bonds Reserve Account established by Section 5.02 hereof.

"Series 2005 A Bonds Reserve Requirement" means, as of any date of calculation, the maximum amount of principal and interest, if any, which will become due on the Series 2005 A Bonds in the then current or any succeeding year.

"Series 2005 A Bonds Sinking Fund" means the Series 2005 A Bonds Sinking Fund established by Section 5.02 hereof.

"Series 2005 B Bonds" means the Sewer Revenue Bonds, Series 2005 B (West Virginia Infrastructure Fund), of the Issuer, authorized by this Resolution.

"Series 2005 B Bonds Reserve Account" means the Series 2005 B Bonds Reserve Account established by Section 5.02 hereof.

"Series 2005 B Bonds Reserve Requirement" means, as of any date of calculation, the maximum amount of principal and interest, if any, which will become due on the Series 2005 B Bonds in the then current or any succeeding year.

"Series 2005 B Bonds Sinking Fund" means the Series 2005 B Bonds Sinking Fund established by Section 5.02 hereof.

"Series 2005 Notes" or the "Notes" means the Sewerage System Bond Anticipation Notes, Series 2005 (West Virginia Infrastructure Fund), of the Issuer, authorized by this Resolution.

"Series 2005 Notes Payment Fund" means the Series 2005 Notes Payment Fund established by Section 4.12 hereof.

"Sinking Funds" means, collectively, the respective sinking funds established for the Series 2005 Bonds and the Prior Bonds.

"State" means the State of West Virginia.

"Supplemental Resolution" means any resolution or order of the Issuer supplementing or amending this Resolution and, when preceded by the article "the," refers specifically to the supplemental resolution or resolutions authorizing the sale of the Series 2005 Bonds and the Series 2005 Notes; provided, that any matter intended by this Resolution to be included in the Supplemental Resolution with respect to the Series 2005 Bonds or the Series 2005 Notes, and not so included, may be included in another Supplemental Resolution.

"Surplus Revenues" means the Net Revenues not required by the Bond Legislation to be set aside and held for the payment of or security for the Prior Bonds, the Series 2005 Bonds or any other obligations of the Issuer, including, without limitation, the Renewal and Replacement Fund, the Sinking Funds and the Reserve Accounts.

"System" means the complete public sewerage system of the Issuer, as presently existing in its entirety or any integral part thereof, and all sewerage facilities owned by the Issuer and all facilities and other property of every nature, real or personal, now or hereafter owned, held or used in connection with the sewerage system; and shall also include any and all extensions, additions, betterments and improvements thereto hereafter acquired or constructed for the sewerage system from any sources whatsoever.

"Tap Fees" means the fees, if any, paid by prospective customers of the System in order to connect thereto.

“West Virginia Infrastructure Fund” means the West Virginia Infrastructure Fund established in accordance with Chapter 31, Article 15A, Section 9 of the Code of West Virginia, 1931, as amended and in effect on the date adopted hereof.

Additional terms and phrases are defined in this Resolution as they are used. Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations; and words importing the masculine, feminine or neutral gender shall include any other gender; and any requirement for execution or attestation of the Bonds or any certificate or other document by the Chairman or the Secretary shall mean that such Bonds, certificate or other document may be executed or attested by an Acting Chairman or Acting Secretary.

ARTICLE II

AUTHORIZATION OF REFUNDING OF PRIOR NOTES

Section 2.01. Authorization of Refunding of Prior Notes. There is hereby authorized and ordered the refunding of all the Prior Notes Outstanding on the Closing Date, through the exchange of the Prior Bonds with the Series 2005 Bonds and the Series 2005 Notes. Upon the refunding of the Prior Notes, the pledge of funds in favor of the Registered Owners of the Prior Notes imposed by the Prior Resolution and the monies in the funds and accounts created by the Prior Resolution pledged to the payment of the Prior Notes are hereby ordered terminated, discharged and released.

ARTICLE III

AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS; AUTHORIZATION AND EXECUTION OF LOAN AGREEMENTS

Section 3.01. Authorization of Bonds. For the purposes of capitalizing interest on the Series 2005 Bonds, refunding the Prior Notes, funding the reserve accounts for the Series 2005 Bonds, and paying certain costs of issuance of the Series 2005 Bonds and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be and hereby are authorized to be issued negotiable Series 2005 Bonds of the Issuer. The Series 2005 Bonds shall be issued in two series. The Series 2005 A Bonds shall be issued as a single bond, designated as "Sewer Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund)," in an aggregate principal amount of not more than \$7,879,443, and shall have such terms as set forth hereinafter and in the Supplemental Resolution. The Series 2005 B Bonds shall be issued as a single bond, designated as "Sewer Revenue Bonds, Series 2005 B (West Virginia Infrastructure Fund)," in an aggregate amount of not more than \$2,411,178, and shall have such terms as set forth hereinafter and in the Supplemental Resolution.

Section 3.02. Terms of Bonds. The Series 2005 Bonds shall be issued in such principal amounts; shall bear interest, if any, at such rate or rates, not exceeding the then legal maximum rate, payable on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in a Supplemental Resolution or as specifically provided in the respective Loan Agreements. The Series 2005 Bonds shall be payable as to principal at the office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Series 2005 Bonds, if any, shall be paid by check or draft of the Paying Agent mailed to the Registered Owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner thereof.

Unless otherwise provided by the Supplemental Resolution, the respective Series 2005 Bonds shall be issued in the form of a single bond for each series, fully registered to the Authority, with a debt service schedule attached, representing the aggregate principal amount of each respective series of Series 2005 Bonds, and shall mature in principal installments, all as provided in the Supplemental Resolution. The Series 2005 Bonds shall be exchangeable at the option and expense of the Registered Owner for another fully registered Bond or Bonds of the same series in aggregate principal amount equal to the amount of said Bonds then Outstanding and being exchanged, with principal installments or maturities, as

applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bonds, if any, shall be issued in fully registered form and in denominations as determined by a Supplemental Resolution. Such Bonds shall be dated and shall have such terms as set forth in a Supplemental Resolution.

Section 3.03. Execution of Bonds. The Series 2005 Bonds shall be executed in the name of the Issuer by the Chairperson, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the Secretary. In case any one or more of the officers who shall have signed or sealed the Series 2005 Bonds shall cease to be such officer of the Issuer before the Series 2005 Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Series 2005 Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.04. Authentication and Registration. No Series 2005 Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Bond Legislation unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Section 3.10 shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Bond Legislation. The Certificate of Authentication and Registration on any Series 2005 Bond shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Series 2005 Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Registered Owner, in accepting the Series 2005 Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Registered Owner shall further be conclusively deemed to have agreed that such Bonds shall be incontestable in the hands of a bona fide registered owner for value.

So long as the Series 2005 Bonds remain outstanding, the Issuer, through the Bond Registrar as its agent, shall keep and maintain books for the registration and transfer of the Bonds.

The registered Bonds shall be transferable only upon the books of the Bond Registrar, by the Registered Owner thereof in person or by his attorney duly authorized in writing, upon surrender thereto, together with a written instrument of transfer satisfactory to the Bond Registrar, duly executed by the Registered Owner or his duly authorized attorney.

In all cases in which the privilege of exchanging Bonds or transferring the registered Bonds are exercised, Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Bonds surrendered in any such exchanges or transfers shall forthwith be canceled by the Bond Registrar. For every such exchange or transfer of Bonds, the Bond Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Bond Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer. The Bond Registrar shall not be obliged to make any such exchange or transfer of Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on the Bonds or, in the case of any proposed redemption of Bonds, next preceding the date of the selection of Bonds to be redeemed, and ending on such interest payment date or redemption date.

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate, register and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Registered Owner's furnishing the Issuer proof of ownership thereof and satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be canceled by the Bond Registrar and held for the account of the Issuer. If any such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

Section 3.07. Bonds Not to be Indebtedness of the Issuer. The Series 2005 Bonds shall not, in any event, be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided. No Registered Owner of the Series 2005 Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer, if any, to pay the Series 2005 Bonds or the interest, if any, thereon.

Section 3.08. Bonds Secured by Pledge of Net Revenues; Lien Position with Respect to Prior Bonds. The payment of the debt service of the Series 2005 Bonds shall be secured by a first lien on the Net Revenues derived from the System on a parity with the lien on the Net Revenues in favor of the Registered Owners of the Prior Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Series 2005 Bonds and the Prior Bonds and to make all other payments provided for in the Bond Legislation and the Prior Resolution, are hereby irrevocably pledged to such payments as they become due.

Section 3.09. Delivery of Bonds. The Issuer shall execute and deliver the Series 2005 Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 2005 Bonds to the original purchasers upon receipt of a request and authorization to the Bond Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate, register and deliver the Series 2005 Bonds to the original purchasers.

Section 3.10. Form of Bonds. The text of the respective Series 2005 Bonds shall be in substantially the following form, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby, or by any Supplemental Resolution adopted prior to the issuance thereof:

(FORM OF SERIES 2005 A BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
LUBECK PUBLIC SERVICE DISTRICT
SEWER REVENUE BOND, SERIES 2005 A
(WEST VIRGINIA INFRASTRUCTURE FUND)

No. AR-1

\$ _____

KNOW ALL MEN BY THESE PRESENTS: That on this ____ day of _____, 2005, LUBECK PUBLIC SERVICE DISTRICT, a public service district, public corporation and political subdivision of the State of West Virginia in Wood County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns, the sum of _____ DOLLARS (\$ _____), in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing _____ 1, 200_, as set forth on the "Debt Service Schedule" attached as EXHIBIT A hereto and incorporated herein by reference.

This Bond shall bear no interest. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent").

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Infrastructure and Jobs Development Council (the "Council"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and between the Issuer and the Authority, on behalf of the Council, dated _____, 2005.

This Bond is issued to refund the Issuer's Sewerage System Bond Anticipation Notes, Series 1999 (West Virginia Infrastructure Fund) (the "Prior Notes"). The existing public sewerage facilities of the Issuer and any further improvements or extensions thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13A and Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended (collectively, the "Act"), a Resolution duly adopted by the Issuer on _____, 2005, and a Supplemental Resolution duly adopted by the Issuer on _____, 2005.

_____, 2005 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for this Bond under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS WITH THE ISSUER'S (1) SEWERAGE SYSTEM REVENUE BONDS, SERIES 1999 A (WEST VIRGINIA SRF PROGRAM), DATED MARCH 9, 1999, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$7,950,000; (2) SEWERAGE SYSTEM REVENUE BONDS, SERIES 1999 B (WEST VIRGINIA INFRASTRUCTURE FUND), DATED MARCH 9, 1999, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,000,000; AND (3) SEWER REVENUE BONDS, SERIES 2005 B (WEST VIRGINIA INFRASTRUCTURE FUND), DATED _____, 2005, ISSUED CONCURRENTLY HERewith IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$_____ (COLLECTIVELY, THE "FIRST LIEN BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Net Revenues in favor of the holders of the First Lien Bonds and from monies in the reserve account created under the Bond Legislation for this Bond (the "Series 2005 A Bonds Reserve Account") and unexpended proceeds of this Bond. Such Net Revenues shall be sufficient to pay the principal of and interest, if any, on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same, or the interest, if any, hereon, except from said special fund provided from the Net Revenues, the monies in the Series 2005 A Bonds Reserve Account and unexpended proceeds of this Bond. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest, if any, on this Bond and all other obligations secured by a lien on or payable from such revenues on a parity with this Bond, including the First Lien Bonds; provided however, that so long as there exists in the Series 2005 A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest, if any, which will become due on this Bond in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with this Bond, including the First Lien Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of this Bond for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of this Bond are

exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar (as defined in the Bond Legislation) by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

Subject to the registration requirements set forth herein, this Bond, under the provision of the Act, is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All monies received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of refunding the Prior Notes as described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such monies, until so applied, in favor of the registered owner of this Bond.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and at the issuance of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Net Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of this Bond.

All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, LUBECK PUBLIC SERVICE DISTRICT has caused this Bond to be signed by its Chairperson and its corporate seal to be hereunto affixed and attested by its Secretary, and has caused this Bond to be dated as of the date first written above.

[SEAL]

Chairperson

ATTEST:

Secretary

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2005 A Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: _____, 2005.

as Registrar

Authorized Officer

EXHIBIT A
DEBT SERVICE SCHEDULE

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto _____ the within Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Issuer with full power of substitution in the premises.

Dated: _____, _____.

In the presence of:

(FORM OF SERIES 2005 B BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
LUBECK PUBLIC SERVICE DISTRICT
SEWER REVENUE BOND, SERIES 2005 B
(WEST VIRGINIA INFRASTRUCTURE FUND)

No. BR-1

\$ _____

KNOW ALL MEN BY THESE PRESENTS: That on this ____ day of _____, 2005, LUBECK PUBLIC SERVICE DISTRICT, a public service district, public corporation and political subdivision of the State of West Virginia in Wood County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns, the sum of _____ DOLLARS (\$ _____), in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing _____ 1, 200_, as set forth on the "Debt Service Schedule" attached as EXHIBIT A hereto and incorporated herein by reference.

This Bond shall bear no interest. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent").

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Infrastructure and Jobs Development Council (the "Council"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and between the Issuer and the Authority, on behalf of the Council, dated _____, 2005.

This Bond is issued to refund the Issuer's Sewerage System Bond Anticipation Notes, Series 1999 (West Virginia Infrastructure Fund) (the "Prior Notes"). The existing public sewerage facilities of the Issuer and any further improvements or extensions thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly

Chapter 16, Article 13A and Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended (collectively, the "Act"), a Resolution duly adopted by the Issuer on _____, 2005, and a Supplemental Resolution duly adopted by the Issuer on _____, 2005 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for this Bond under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS WITH THE ISSUER'S (1) SEWERAGE SYSTEM REVENUE BONDS, SERIES 1999 A (WEST VIRGINIA SRF PROGRAM), DATED MARCH 9, 1999, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$7,950,000; (2) SEWERAGE SYSTEM REVENUE BONDS, SERIES 1999 B (WEST VIRGINIA INFRASTRUCTURE FUND), DATED MARCH 9, 1999, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,000,000; AND (3) SEWER REVENUE BONDS, SERIES 2005 A (WEST VIRGINIA INFRASTRUCTURE FUND), DATED _____, 2005, ISSUED CONCURRENTLY HERewith IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$_____ (COLLECTIVELY, THE "FIRST LIEN BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Net Revenues in favor of the holders of the First Lien Bonds and from monies in the reserve account created under the Bond Legislation for this Bond (the "Series 2005 B Bonds Reserve Account") and unexpended proceeds of this Bond. Such Net Revenues shall be sufficient to pay the principal of and interest, if any, on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same, or the interest, if any, hereon, except from said special fund provided from the Net Revenues, the monies in the Series 2005 B Bonds Reserve Account and unexpended proceeds of this Bond. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest, if any, on this Bond and all other obligations secured by a lien on or payable from such revenues on a parity with this Bond, including the First Lien Bonds; provided however, that so long as there exists in the Series 2005 B Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest, if any, which will become due on this Bond in the then current or any succeeding year, and in

the respective reserve accounts established for any other obligations outstanding on a parity with this Bond, including the First Lien Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of this Bond for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of this Bond are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar (as defined in the Bond Legislation) by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

Subject to the registration requirements set forth herein, this Bond, under the provision of the Act, is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All monies received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of refunding the Prior Notes as described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such monies, until so applied, in favor of the registered owner of this Bond.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and at the issuance of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Net Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of this Bond.

All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, LUBECK PUBLIC SERVICE DISTRICT has caused this Bond to be signed by its Chairperson and its corporate seal to be hereunto affixed and attested by its Secretary, and has caused this Bond to be dated as of the date first written above.

[SEAL]

Chairperson

ATTEST:

Secretary

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2005 B Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: _____, 2005.

_____,
as Registrar

Authorized Officer

EXHIBIT A
DEBT SERVICE SCHEDULE

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto _____ the within Bond and does hereby irrevocably constitute and appoint _____; Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Issuer with full power of substitution in the premises.

Dated: _____, _____.

In the presence of:

Section 3.11. Sale of Bonds; Approval and Ratification of Execution of Loan Agreements. The Loan Agreements for the Series 2005 Bonds, including all schedules and exhibits attached thereto, are hereby approved and incorporated into this Resolution. The Series 2005 Bonds shall be sold to the Authority, pursuant to the terms and conditions of the Loan Agreements. If not so authorized by previous resolution, the Chairperson is specifically authorized and directed to execute the Loan Agreements and the Secretary is directed to affix the seal of the Issuer, attest the same and deliver the Loan Agreements to the Authority, and any such prior execution and delivery is hereby authorized, approved, ratified and confirmed.

Section 3.12. Filing of Amended Schedule. The Issuer will file with the Council and the Authority a schedule for the Series 2005 Bonds and the Series 2005 Notes, the form of which will be provided by the Council, setting forth the sources and uses of funds therefor.

ARTICLE IV

AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF NOTES; AUTHORIZATION AND EXECUTION OF LOAN AGREEMENT

Section 4.01. Authorization of Notes. For the purposes of refunding the Prior Notes and paying certain costs of issuance of the Notes and related costs, there shall be and hereby are authorized to be issued negotiable Notes of the Issuer. The Notes shall be issued as a single note, designated "Sewerage System Bond Anticipation Notes, Series 2005 (West Virginia Infrastructure Fund)," in the aggregate principal amount of not more than \$6,278,679, and shall have such terms as set forth hereinafter and in the Supplemental Resolution.

Section 4.02. Terms of Notes. The Notes shall be issued in such principal amounts; shall bear interest, if any, at such rate or rates, not exceeding the then legal maximum rate, payable on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in the Supplemental Resolution or as specifically provided in the Loan Agreement. The Notes shall be payable as to principal at the principal office of the Paying Agent, in any coin or currency which, on the date of payment of principal is legal tender for the payment of public and private debts under the laws of the United States of America.

Unless otherwise provided in the Supplemental Resolution, the Notes shall be issued in the form of a single note, fully registered to the Authority, all as provided in the Loan Agreement and the Supplemental Resolution. The Notes shall be exchangeable at the option and expense of the Registered Owner for other fully registered Notes in aggregate principal amount equal to the amount of said Notes then Outstanding, with a maturity corresponding to the dates of maturity of the Notes; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Section 4.03. Execution of Notes. The Notes shall be executed in the name of the Issuer by the Chairperson, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the Secretary. In case any one or more of the officers who shall have signed or sealed the Notes shall cease to be such officer of the Issuer before the Notes so signed and sealed have been sold and delivered, such Notes may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Notes had not ceased to hold such office. The Notes may be signed and sealed on behalf of the Issuer by such person as, at the actual time of the execution of the Notes, shall hold the proper office in the Issuer, although at the date of the Notes such person may not have held such office or may not have been so authorized.

Section 4.04. Authentication and Registration. No Note shall be valid or obligatory for any purpose or entitled to any security or benefit under this Resolution unless and until the Certificate of Authentication and Registration on such Note, substantially in the form set forth in Section 4.10, shall have been duly manually executed by the Notes Registrar. Any such executed Certificate of Authentication and Registration upon any such Note shall be conclusive evidence that such Note has been authenticated, registered and delivered under this Resolution. The Certificate of Authentication and Registration on any Note shall be deemed to have been executed by the Notes Registrar if manually signed by an authorized officer of the Notes Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all the Notes issued hereunder.

Section 4.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Notes shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Registered Owner, in accepting any of the Notes shall be conclusively deemed to have agreed that such Notes shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Registered Owner shall further be conclusively deemed to have agreed that such Notes shall be incontestable in the hands of a bona fide registered owner for value.

So long as the Notes remain Outstanding, the Issuer, through the Notes Registrar as its agent, shall keep and maintain books for the registration and transfer of the Notes.

The registered Notes shall be transferable only upon the books of the Notes Registrar, by the Registered Owner thereof in person or by his attorney duly authorized in writing, upon surrender thereto, together with a written instrument of transfer satisfactory to the Notes Registrar, duly executed by the Registered Owner or his duly authorized attorney.

In all cases in which the privilege of exchanging the Notes or transferring the Notes is exercised, the Notes shall be delivered in accordance with the provisions of this Resolution. All Notes surrendered in any such exchanges or transfers shall forthwith be canceled by the Notes Registrar. For every such exchange or transfer of Notes, the Notes Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Note upon each exchange or transfer, and any other expenses of the Notes Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer.

Section 4.06. Notes Mutilated, Destroyed, Stolen or Lost. In case any Note shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Notes Registrar shall, if so advised by the Issuer, authenticate, register and deliver a

new Note of the same series and of like tenor as the Notes so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Note, upon surrender and cancellation of such mutilated Note, or in lieu of and substitution for the Note destroyed, stolen or lost, and upon the Registered Owner's furnishing the Issuer proof of ownership thereof and satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Notes Registrar may incur. All Notes so surrendered shall be canceled by the Notes Registrar and held for the account of the Issuer. If such Note shall have matured or be about to mature, instead of issuing a substitute Note, the Issuer may pay the same, upon being indemnified as aforesaid, and, if such Note be lost, stolen, or destroyed, without surrender therefor.

Section 4.07. Pledge of Security for the Notes. The Notes shall be payable solely from proceeds of any additional sewerage system revenue bonds or refunding revenue bonds of the Issuer, any additional grants (other than Council grants) which the Issuer may receive and any additional bond anticipation notes which the Issuer may issue from time to time upon maturity of the Notes.

Section 4.08. Notes Not to be Indebtedness of Issuer. The Notes shall be special obligations of the Issuer, payable solely from the sources set forth in Section 4.07 hereof. The Notes do not and shall not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation. The general funds of the Issuer are not liable, and neither the full faith and credit nor the taxing power, if any, of the Issuer is pledged for the payment of the Notes. The Registered Owner of the Notes shall never have the right to compel the forfeiture of any property of the Issuer. The Notes shall not be a debt of the Issuer, nor a legal or equitable pledge, charge, lien or encumbrance upon any property of the Issuer or upon any of its income, receipts or revenues.

Section 4.09. Covenants of Resolution Applicable to Notes. All covenants and restrictions contained in the Resolution, where appropriate and to the extent required by the Council, the Authority or the Loan Agreement for the Notes, are recognized and agreed by the Issuer to be applicable to the Notes.

Section 4.10. Form of Notes. The text of the Notes shall be in substantially the following form, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby or by any Supplemental Resolution adopted prior to the issuance thereof:

(FORM OF NOTE)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
LUBECK PUBLIC SERVICE DISTRICT
SEWERAGE SYSTEM BOND ANTICIPATION NOTE, SERIES 2005
(WEST VIRGINIA INFRASTRUCTURE FUND)

No. R-1

\$_____

KNOW ALL MEN BY THESE PRESENTS: That on this __ day of _____, 2005, LUBECK PUBLIC SERVICE DISTRICT, a public service district, public corporation and political subdivision of the State of West Virginia, in Wood County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns, the sum of _____ DOLLARS (\$_____), in annual installments of One Hundred Dollars (\$100) on June 1, 2006, June 1, 2007, June 1, 2008, and June 1, 2009, and with the entire outstanding principal amount payable in full on March 1, 2010.

This Note shall bear no interest. The principal of this Note is payable in any coin or currency which on the date of payment thereof is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent").

This Note may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Infrastructure and Jobs Development Council (the "Council") and under the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement dated ____, 2005, between the Issuer and the Authority, on behalf of the Council.

This Note is issued to refund the Issuer's Sewerage System Bond Anticipation Notes, Series 1999 (West Virginia Infrastructure Fund) (the "Prior Notes") and to pay certain costs of issuance hereof and related costs. This Note is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13A and Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended (collectively, the "Act"), a Resolution duly adopted by the Issuer on _____, 2005, and a Supplemental Resolution duly adopted by the Issuer on _____, 2005 (collectively, the "Resolution"), and is subject to all the terms and conditions thereof.

THIS NOTE IS ISSUED JUNIOR AND SUBORDINATE WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS TO THE ISSUER'S (1) SEWERAGE SYSTEM REVENUE BONDS, SERIES 1999 A (WEST VIRGINIA SRF PROGRAM), DATED MARCH 9, 1999, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$7,950,000; (2) SEWERAGE SYSTEM REVENUE BONDS, SERIES 1999 B (WEST VIRGINIA INFRASTRUCTURE FUND), DATED MARCH 9, 1999, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,000,000; (3) SEWER REVENUE BONDS, SERIES 2005 A (WEST VIRGINIA INFRASTRUCTURE FUND), DATED _____, 2005, ISSUED CONCURRENTLY HERewith IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$ _____; AND (4) SEWER REVENUE BONDS, SERIES 2005 B (WEST VIRGINIA INFRASTRUCTURE FUND), DATED _____, 2005, ISSUED CONCURRENTLY HERewith IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$ _____.

This Note is payable solely from proceeds of any additional sewerage system revenue bonds or refunding revenue bonds of the Issuer, any additional grants (other than Council grants) which the Issuer may receive and any additional bond anticipation notes which the Issuer may issue from time to time upon maturity of this Note. Money from these sources shall be deposited in the Series 2005 Notes Payment Fund established under the Resolution for the prompt payment of this Note.

This Note does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same, except from the sources set forth above. Pursuant to the Resolution, the Issuer has entered into certain covenants with the Authority, for the terms of which reference is made to the Resolution. Remedies provided the Authority are exclusively as provided in the Resolution, to which reference is here made for a detailed description thereof.

This Note is transferable, as provided in the Resolution, only upon the books of the Registrar (as defined in the Resolution) by the registered owner or its attorney duly authorized in writing, upon the surrender of this Note, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

This Note, under the provision of the Act, is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Note, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law, shall be applied solely to the payment of the costs of refunding the Prior Notes and costs of issuance

hereof as described in the Resolution, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the registered owner of this Note.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and at the issuance of this Note do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Note, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia.

All provisions of the Resolution and the statutes under which this Note is issued shall be deemed to be a part of the contract evidenced by this Note, to the same extent as if written fully herein.

IN WITNESS WHEREOF, LUBECK PUBLIC SERVICE DISTRICT has caused this Note to be signed by its Chairperson and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Secretary, and has caused this Note to be dated as of the date first written above.

[SEAL]

Chairperson

ATTEST:

Secretary

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Note is one of the Notes described in the within-mentioned Resolution and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: _____, 2005

_____,
as Registrar

Authorized Officer

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto __

the within Note and does hereby irrevocably constitute and appoint _____,
Attorney to transfer the said Note on the books kept for registration of the within Note of the
said Issuer, with full power of substitution in the premises.

Dated: _____, ____.

In the presence of:

Section 4.11. Sale of Notes; Approval and Ratification of Execution of Loan Agreement. The Loan Agreement for the Series 2005 Notes, including all schedules and exhibits attached thereto, are hereby approved and incorporated into this Resolution. The Series 2005 Notes shall be sold to the Authority, pursuant to the terms and conditions of the Loan Agreement. If not so authorized by previous resolution, the Chairperson is specifically authorized and directed to execute the Loan Agreement and the Secretary is directed to affix the seal of the Issuer, attest the same and deliver the Loan Agreement to the Authority, and any such prior execution and delivery is hereby authorized, approved, ratified and confirmed.

Section 4.12. Establishment of Notes Payment Fund. There is hereby created and established with the Commission, to be held by the Commission separate and apart from all other funds or accounts of the Commission and from all other funds or accounts of the Issuer, the Series 2005 Notes Payment Fund as set forth in Section 5.02 hereof. Upon receipt of proceeds of any grants (other than Council grants) for the System, any sewerage system revenue bonds or refunding revenue bonds of the Issuer, or any additional bond anticipation notes which the Issuer may issue upon maturity of the Notes, an amount of the proceeds of such grants, revenue bonds or bond anticipation notes sufficient to pay all or a portion of the entire outstanding principal of the Notes shall be deposited in the Series 2005 Notes Payment Fund. All moneys so deposited in the Series 2005 Notes Payment Fund shall be immediately paid by the Commission to the Authority in full or partial payment of the outstanding principal of the Notes. All moneys deposited in the Series 2005 Notes Payment Fund shall be held in trust for the Authority, and the Issuer shall have no rights with respect thereto except to receive the balance therein after payment of the Notes in full and the charges, if any, of the Paying Agent.

Any moneys remaining in the Series 2005 Notes Payment Fund, after the payment of the Notes in full and all charges of the Paying Agent, shall be used as directed in writing by the Authority and the Infrastructure Council.

Section 4.13. Prohibition of Other Debt. So long as the Notes are outstanding, no bonds, notes or other evidences of indebtedness secured by the System or the proceeds of any grants, revenue bonds or bond anticipation notes for the System, shall be issued by the Issuer without the prior written consent of the Authority and the Council.

ARTICLE V

FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

Section 5.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are hereby created with (or continued if previously established by the Prior Resolution) and shall be held by the Depository Bank separate and apart from all other funds or accounts of the Depository Bank and the Issuer and from each other:

- (1) Revenue Fund (established by the Prior Resolution); and
- (2) Renewal and Replacement Fund (established by the Prior Resolution).

Section 5.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby created with and shall be held by the Commission, separate and apart from all other funds or accounts of the Commission and the Issuer and from each other:

- (1) Series 2005 A Bonds Sinking Fund;
- (2) Series 2005 A Bonds Reserve Account;
- (3) Series 2005 B Bonds Sinking Fund;
- (4) Series 2005 B Bonds Reserve Account; and
- (5) Series 2005 Notes Payment Fund.

Section 5.03. System Revenues; Flow of Funds. A. The entire Gross Revenues derived from the operation of the System shall be deposited upon receipt in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in this Bond Legislation and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner herein provided. All revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following manner and order of priority:

- (1) The Issuer shall first, each month, pay from the Revenue Fund all Operating Expenses of the System.

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) for deposit in the Sinking Funds for the Prior Bonds, the amounts required to pay principal of the Prior Bonds as required by the Prior Resolution; (ii) commencing 3 months prior to the first date of payment of principal of the Series 2005 A Bonds, for deposit in the Series 2005 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2005 A Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2005 A Bonds Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payment shall be increased proportionately to provide, 1 month prior to the next quarterly principal payment date, the required amount of principal coming due on such date; and (iii) commencing 3 months prior to the first date of payment of principal of the Series 2005 B Bonds, for deposit in the Series 2005 B Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2005 B Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2005 B Bonds Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payment shall be increased proportionately to provide, 1 month prior to the next quarterly principal payment date, the required amount of principal coming due on such date.

(3) The Issuer shall next, (i) on the first day of each month, transfer from the Revenue Fund and remit to the Commission for deposit in the Reserve Accounts for the Prior Bonds, the amounts required by the Prior Resolution to be deposited therein; (ii) on March 1, 2021, after the Series 1999 A Bonds have been paid in full, the Issuer hereby authorizes and directs the Commission to transfer \$437,747 from the Series 1999 A Bonds Reserve Account into the Series 2005 A Bonds Reserve Account to fully fund such account in an amount equal to the Series 2005 A Bonds Reserve Requirement; and (iii) on the first day of each month, commencing June 1, 2009, transfer from the Revenue Fund and remit to the Commission for deposit in the Series 2005 B Bonds Reserve Account, an amount equal to 1/120th of the Series 2005 B Bonds Reserve Requirement, until the amount in the Series 2005 B Bonds Reserve Account equals the Series 2005 B Bonds Reserve Requirement; provided that, no further payments shall be made into the respective Series 2005 Bonds Reserve Accounts when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the respective Series 2005 Bonds Reserve Requirement. In the event any amount is withdrawn from any of the Series 2005 Bonds Reserve Account, the Issuer shall transfer from the Revenue Fund and restore the deficient Series 2005 Bonds Reserve Account to an amount equal to the Series 2005 Bonds Reserve Requirement.

(4) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Depository Bank, for deposit in the Renewal and Replacement Fund, a sum equal to 2 1/2% of the Gross Revenues each month (as previously set forth in the Prior Resolution and not in addition thereto), exclusive of any payments for account of any

Reserve Account. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, emergency repairs, improvements or extensions to the System; provided, that any deficiencies in any Reserve Account (except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required hereof) shall be promptly eliminated with monies from the Renewal and Replacement Fund.

Monies in the Series 2005 A Bonds Sinking Fund and the Series 2005 B Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest, if any, on the Series 2005 A Bonds and the Series 2005 B Bonds, respectively, as the same shall become due. Monies in the Series 2005 A Bonds Reserve Account and the Series 2005 B Bonds Reserve Account shall be used only for the purposes of paying principal of and interest, if any, on the Series 2005 A Bonds and the Series 2005 B Bonds, respectively, as the same shall come due, when other monies in the Series 2005 A Bonds Sinking Fund and the Series 2005 B Bonds Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on monies in the Series 2005 A Bonds Sinking Fund, the Series 2005 A Bonds Reserve Account, the Series 2005 B Bonds Sinking Fund and the Series 2005 B Bonds Reserve Account shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment due on the Series 2005 Bonds, respectively, and then to the next ensuing principal payment due thereon, all on a pro rata basis.

Any withdrawals from the Series 2005 A Bonds Reserve Account and the Series 2005 B Bonds Reserve Account which result in a reduction in the balance of such accounts to below the respective Reserve Requirements thereof, shall be restored from the first Net Revenues available after all required payments have been made in full in the order set forth above.

As and when additional Bonds ranking on a parity with the Series 2005 Bonds are issued, provision shall be made for additional payments into the respective sinking funds sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the respective reserve accounts in an amount equal to the requirement therefor.

The Issuer shall not be required to make any further payments into the respective Series 2005 Bonds Sinking Funds or the respective Series 2005 Bonds Reserve Accounts therein when the aggregate amount of funds therein are at least equal to the aggregate principal

amount of the Series 2005 Bonds issued pursuant to this Bond Legislation then Outstanding and all interest, if any, to accrue until the maturity thereof.

Principal, interest or reserve account payments, whether made for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the Series 2005 Bonds and the Prior Bonds, in accordance with the respective principal amounts then Outstanding.

The Commission is hereby designated as the fiscal agent for the administration of the respective Series 2005 Bonds Sinking Funds and the respective Series 2005 Bonds Reserve Accounts created hereunder, and all amounts required for said accounts shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein. If required by the Authority at any time, the Issuer shall make the necessary arrangements whereby required payments into the Series 2005 Bonds Sinking Funds and the respective Series 2005 Bonds Reserve Accounts shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required hereunder.

Monies in the respective Series 2005 Bonds Sinking Funds and the respective Series 2005 Bonds Reserve Accounts shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Series 2005 A Bonds Sinking Fund, the Series 2005 A Bonds Reserve Account, the Series 2005 B Bonds Sinking Fund and the Series 2005 B Bonds Reserve Account shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2005 Bonds, respectively, under the conditions and restrictions set forth herein.

B. The Issuer shall on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the required principal, interest and reserve account payments with respect to the Series 2005 Bonds and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation.

C. The Issuer shall complete the "Monthly Payment Form," a form of which is attached to the Loan Agreements, and submit a copy of said form along with a copy of its payment check to the Authority by the 5th day of each calendar month.

D. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinbefore provided, are current and there remains in the Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into such funds during the following month or such other period as required by law, such excess shall be considered Surplus Revenues. Surplus Revenues may be used for any lawful purpose of the System.

E. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar, the Paying Agent or the Depository Bank, on such dates as such parties shall require, such additional sums as shall be necessary to pay their respective charges and fees then due. In the case of payments to the Commission under this paragraph, the Issuer shall, if required by the Authority at any time, make the necessary arrangements whereby such required payments shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required.

F. The monies in excess of the maximum amounts insured by FDIC in any of the funds and accounts shall at all times be secured, to the full extent thereof in excess of such insured sum, by Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

G. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates; provided, however, that the priority of curing deficiencies in the funds and accounts herein shall be in the same order as payments are to be made pursuant to this Section 5.03, and the Net Revenues shall be applied to such deficiencies before being applied to any other payments hereunder.

H. All remittances made by the Issuer to the Commission shall clearly identify the fund or account into which each amount is to be deposited.

I. The Gross Revenues of the System shall only be used for purposes of the System.

ARTICLE VI

EXCHANGE OF BONDS AND NOTES FOR PRIOR NOTES

Section 6.01. Exchange of Bonds and Notes for Prior Notes. On the Closing Date, the Issuer shall deliver the Series 2005 A Bonds, the Series 2005 B Bonds and the Series 2005 Notes to the Authority in exchange for the Prior Notes, which exchange shall release and discharge the liens, pledges and encumbrances securing the Prior Notes. From the proceeds of the Series 2005 Notes, there shall be paid by the Issuer all costs of issuance of the Series 2005 Bonds and the Series 2005 Notes.

ARTICLE VII

ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Bond Legislation shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Registered Owner of the Series 2005 Bonds and the Series 2005 Notes. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Registered Owners of the Series 2005 Bonds and the Series 2005 Notes as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as the Series 2005 Bonds and the Series 2005 Notes or the interest, if any, thereon are Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 2005 Bonds shall not be nor constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Registered Owner of the Series 2005 Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer, if any, to pay the Series 2005 Bonds or the interest, if any, thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues; Lien Position with Respect to Prior Bonds. The payment of the debt service of the Series 2005 Bonds shall be secured by a first lien on the Net Revenues derived from the System on a parity with the lien on the Net Revenues in favor of the Registered Owners of the Prior Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Series 2005 Bonds and the Prior Bonds and to make all other payments provided for in the Bond Legislation, are hereby irrevocably pledged to such payments as they become due.

Section 7.04. Initial Schedule of Rates and Charges. The Issuer has obtained any and all approvals of rates and charges required by State law and has taken any other action required to establish and impose such rates and charges, with all requisite appeal periods having expired without successful appeal. Such rates and charges shall be sufficient to comply with the requirements of the Loan Agreements. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth and approved by the PSC Order and such rates are hereby adopted.

So long as the Series 2005 Bonds are outstanding, the Issuer covenants and agrees to fix and collect rates, fees and other charges for the use of the System and to take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Bond Legislation and in compliance with the Loan Agreements. In the event the schedule

of rates and charges initially established for the System in connection with the Series 2005 Bonds shall prove to be insufficient to produce the required sums set forth in this Bond Legislation and the Loan Agreements, the Issuer hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates and charges and take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Bond Legislation and the Loan Agreements.

Section 7.05. Sale of the System. So long as the Prior Bonds are outstanding, the Issuer shall not sell, mortgage, lease or otherwise dispose of or encumber the System, or any part thereof, except as provided in the Prior Resolution. Additionally, so long as the Series 2005 Bonds are outstanding and except as otherwise required by law or with the written consent of the Authority and the Council, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to fully pay all the Bonds Outstanding in accordance with Article X hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall immediately be remitted to the Commission for deposit in the respective Series 2005 Bonds Sinking Fund, and, with the written permission of the Authority and the Council, or in the event the Authority is no longer a Bondholder, the Issuer shall direct the Commission to apply such proceeds to the payment of principal of and interest, if any, on the respective Series 2005 Bonds. Any balance remaining after the payment of the respective Series 2005 Bonds and interest, if any, thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of \$10,000, the Issuer shall, by resolution, duly adopted, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. If the amount to be received from such sale, lease or other disposition of said property, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of \$10,000 but not in excess of \$50,000, the Issuer shall first, determine upon consultation with the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property upon public bidding. The proceeds derived from any such sale shall be deposited in the Renewal and Replacement Fund. The payment of such proceeds into

the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said fund by other provisions of this Bond Legislation. No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom, together with all other amounts received during the same Fiscal Year for such sales, leases, or other dispositions of such properties, shall be in excess of \$50,000 and insufficient to pay all Bonds then Outstanding without the prior approval and consent in writing of the Registered Owners, or their duly authorized representatives, of the Bonds then Outstanding. The Issuer shall prepare the form of such approval and consent for execution by the then Registered Owners of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Except as provided in this Section 7.06 and Section 7.07 hereof, the Issuer shall not issue any obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Series 2005 Bonds. All obligations issued by the Issuer after the issuance of the Series 2005 Bonds and payable from the revenues of the System, except such additional parity Bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on, pledge and source of and security for payment from such revenues and in all other respects, to the Series 2005 Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into all funds and accounts set forth herein have been made and are current at the time of the issuance of such subordinate obligations.

Except as provided above, the Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the lien of the Series 2005 Bonds, and the interest thereon, if any, upon any or all of the income and revenues of the System pledged for payment of the Series 2005 Bonds and the interest thereon, if any, in this Bond Legislation, or upon the System or any part thereof.

The Issuer shall give the Authority and the Council prior written notice of its issuance of any other obligations to be used for the System, payable from the revenues of the System or from any grants, or any other obligations related to the Project or the System.

Section 7.07. Parity Bonds. So long as the Prior Bonds are outstanding, the limitations on the issuance of parity obligations set forth in the Prior Resolution shall be applicable. In addition, no Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Series 2005 Bonds pursuant to this Bond Legislation, except with the prior written consent of the Authority and the Council under the conditions and in the manner herein provided.

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 2005 Bonds.

No such Parity Bonds shall be issued except for the purpose of financing the costs of the design, acquisition, or construction of extensions and improvements to the System or refunding any outstanding Bonds, or both such purposes.

No Parity Bonds shall be issued at any time, however, unless there has been procured and filed with the Secretary a written statement by the Independent Certified Public Accountants, reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided for, from the System during any 12 consecutive months, within the 18 months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the issuance of such Parity Bonds, if any, shall not be less than 115% of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest, if any, on the following:

- (1) The Bonds then Outstanding;
- (2) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Resolution then Outstanding; and
- (3) The Parity Bonds then proposed to be issued.

The "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from (a) the improvements to be financed by such Parity Bonds and (b) any increase in rates adopted by the Issuer and approved by the PSC, the period for appeal of which has expired prior to the date of delivery of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Independent Certified Public Accountants, which shall be filed in the office of the Secretary prior to the issuance of such Parity Bonds.

The Net Revenues actually derived from the System during the 12-consecutive-month period hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Independent Certified Public Accountants, on account of increased rates, rentals, fees and charges for the System adopted by the Issuer, the period for appeal of which has expired prior to issuance of such Parity Bonds.

All covenants and other provisions of this Bond Legislation (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and

security of the Registered Owners of the Bonds and the Registered Owners of any Parity Bonds subsequently issued from time to time within the limitations of and in compliance with this section. Bonds issued on a parity, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the revenues of the System and their source of and security for payment from said revenues, without preference of any Bond of one series over any other Bond of the same series. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this Bond Legislation required for and on account of such Parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Bond Legislation.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on revenues of the System is subject to the prior and superior liens of the Series 2005 Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such revenues, with the Series 2005 Bonds.

No Parity Bonds shall be issued any time, however, unless all the payments into the respective funds and accounts provided for in this Bond Legislation with respect to the Bonds then Outstanding, and any other payments provided for in this Bond Legislation, shall have been made in full as required to the date of delivery of such Parity Bonds, and the Issuer shall then be in full compliance with all the covenants, agreements and terms of this Bond Legislation.

Section 7.08. Books; Records and Audit. The Issuer shall keep complete and accurate records of the cost of acquiring the Project site and the cost of designing, acquiring, constructing and installing the Project. The Issuer shall permit the Authority and the Council, or their agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at all reasonable times for the purpose of audit and examination. The Issuer shall submit to the Authority and the Council such documents and information as it may reasonably require in connection with the design, acquisition, construction and installation of the Project, the operation and maintenance of the System and the administration of the loan or any grants or other sources of financing for the Project.

The Issuer shall permit the Authority and the Council, or their agents and representatives, to inspect all records pertaining to the operation and maintenance of the System at any reasonable time following completion of construction of the Project and commencement of operation thereof, or if the Project is an improvement to an existing system, at any reasonable time following commencement of construction.

The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Registered Owner of the Bonds issued pursuant to this Bond Legislation shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

The accounting system for the System shall follow current generally accepted accounting principles and safeguards to the extent allowed and as prescribed by the PSC. Separate control accounting records shall be maintained by the Issuer. Subsidiary records as may be required shall be kept in the manner and on the forms, books and other bookkeeping records as prescribed by the Governing Body. The Governing Body shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the Governing Body shall be reported to such agent of the Issuer as the Governing Body shall direct.

The Issuer shall file with the Council, the Authority, or any other original purchaser of the Series 2005 Bonds, and shall mail in each year to any Registered Owner of the Series 2005 Bonds, requesting the same, an annual report containing the following:

(A) A statement of Gross Revenues, Operating Expenses, Net Revenues and Surplus Revenues derived from and relating to the System.

(B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Bond Legislation, and the status of all said funds and accounts.

(C) The amount of any Bonds, notes or other obligations outstanding.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants in compliance with the applicable OMB Circular or any successor thereto, and the Single Audit Act, or any successor thereto, to the extent legally required, and shall mail upon request, and make available generally, the report of the Independent Certified Public Accountants, or a summary thereof, to any Registered Owner of the Series 2005 Bonds, and shall submit said report to the Council and the Authority, or any other original purchaser of the Series 2005 Bonds. Such audit report submitted to the Council and the Authority shall include a statement that notes whether the results of tests disclosed instances of noncompliance that are required to be reported under government auditing standards and, if they are, describes the instances of noncompliance and the audited financial statements shall include a statement that notes whether the revenues of the System are adequate to meet the Issuer's Operating Expenses and debt service and reserve requirements.

Subject to the terms, conditions and provisions of the Loan Agreements and the Act, the Issuer has acquired, or shall do all things necessary to acquire, the proposed site of the Project and shall do, is doing or has done all things necessary to construct the Project in accordance with the plans, specifications and designs prepared by the Consulting Engineers. All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Issuer.

The Issuer shall permit the Council and the Authority, or their agents and representatives, to enter and inspect the Project site and facilities at all reasonable times. Prior to, during and after completion of construction and commencement of operation of the Project, the Issuer shall also provide the Council and the Authority, or their agents and representatives, with access to the System site and facilities, as may be reasonably necessary to accomplish all of the powers and rights of the Council and the Authority with respect to the System pursuant to the Act.

Section 7.09. Rates. Prior to the issuance of the Series 2005 Bonds, equitable rates or charges for the use of and service rendered by the System have been established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the Secretary, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System (i) to provide for all Operating Expenses of the System and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2005 Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2005 Bonds, including the Prior Bonds; provided that, in the event that amounts equal to or in excess of the reserve requirements are on deposit in the respective Series 2005 Bonds Reserve Accounts and any reserve accounts for obligations on a parity with the Series 2005 Bonds, including the Prior Bonds, are funded at least at the requirement therefor, such balance each year need only equal at least 110% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2005 Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2005 Bonds, including the Prior Bonds. In any event, the Issuer shall not reduce the rates or charges for services described in Section 7.04.

Section 7.10. Operating Budget and Monthly Financial Report. The Issuer shall annually, at least 30 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the Council and the Authority within 30 days of adoption thereof. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by a professional engineer which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of a professional engineer that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Council and the Authority and to any Registered Owner of the Series 2005 Bonds, within 30 days of adoption thereof, and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the Council and the Authority and to any Registered Owner of the Series 2005 Bonds, or anyone acting for and on behalf of such Registered Owner.

Commencing on the date contracts are executed for the acquisition and construction of the Project and for two years following the completion of the Project, the Issuer shall each month complete a "Monthly Financial Report," a form of which is attached to the Loan Agreements, and forward a copy of such report to the Council and the Authority by the 10th day of each month.

Section 7.11. Engineering Services and Operating Personnel. The Issuer will obtain a certificate of the Consulting Engineers in the form attached to the Loan Agreements, stating, among other things, that the Project has been or will be constructed in accordance with the approved plans, specifications and designs as submitted to the Council and the Authority, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Council and the Authority is sufficient to pay the costs of acquisition and construction of the Project, and all permits required by federal and state laws for construction of the Project have been obtained.

The Issuer shall provide and maintain competent and adequate engineering services satisfactory to the Council and the Authority covering the supervision and inspection of the development and construction of the Project and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such engineer shall certify to the Council and the Authority and the Issuer at the completion of construction

that construction of the Project is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies.

The Issuer shall employ qualified operating personnel properly certified by the State to operate the System during the entire term of the Loan Agreements.

Section 7.12. No Competing Franchise. To the extent legally allowable, the Issuer will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation, body, agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 7.13. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 20 days after the same shall become due and payable, the user of the services and facilities shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and the rules and regulations of the PSC, rates, rentals and other charges, if not paid, when due, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the PSC, discontinue and shut off the services of the System to all users of the services of the System delinquent in payment of charges for the services of the System and will not restore such services until all delinquent charges for the services of the System, plus reasonable interest and penalty charges for the restoration of service, have been fully paid and shall take all further actions to enforce collections to the maximum extent permitted by law. If the water facilities are not owned by the Issuer, the Issuer will use diligent efforts to enter into a termination agreement with the provider of such water, subject to any required approval of such agreement by the PSC and all its rules, regulations and orders.

Section 7.14. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer or employee of the Issuer shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the

operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 7.15. Insurance and Construction Bonds. A. The Issuer hereby covenants and agrees that so long as the Series 2005 Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

(1) FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the System in an amount equal to the actual cost thereof. In time of war the Issuer will also carry and maintain insurance to the extent available against the risks and hazards of war. The proceeds of all such insurance policies shall be placed in the Renewal and Replacement Fund and used only for the repairs and restoration of the damaged or destroyed properties or for the other purposes provided herein for the Renewal and Replacement Fund. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) to protect the interests of the Issuer, the Authority, the prime contractor and all subcontractors as their respective interests may appear, in accordance with the Loan Agreements, during construction of the Project on a 100% basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Issuer, the contractors and subcontractors, as their interests may appear.

(2) PUBLIC LIABILITY INSURANCE, with limits of not less than \$1,000,000 per occurrence to protect the Issuer from claims for bodily injury and/or death and not less than \$500,000 per occurrence from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer from claims arising out of operation or ownership of motor vehicles of or for the System.

(3) WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT BONDS, such bonds to be in the amounts of 100% of the construction contract and to be required of each contractor contracting directly with the Issuer, and such payment bonds will be filed with the Clerk of The County Commission of the County in which such work is to be performed prior to commencement of construction of the Project in compliance with West Virginia Code, Chapter 38, Article 2, Section 39.

(4) FLOOD INSURANCE, if the facilities of the System are or will be located in designated special flood or mudslide-prone areas and to the extent available at reasonable cost to the Issuer.

(5) BUSINESS INTERRUPTION INSURANCE, to the extent available at reasonable cost to the Issuer.

(6) FIDELITY BONDS will be provided as to every officer, member and employee of the Issuer or the Governing Body having custody of the revenues or of any other funds of the System, in an amount at least equal to the total funds in the custody of any such person at any one time.

B. The Issuer shall require all contractors engaged in the construction of the Project to furnish a performance bond and a payment bond, each in an amount equal to 100% of the contract price of the portion of the Project covered by the particular contract as security for the faithful performance of such contract. The Issuer shall verify such bonds prior to commencement of construction.

The Issuer shall also require all contractors engaged in the construction of the Project to carry such worker's compensation coverage for all employees working on the Project and public liability insurance, vehicular liability insurance and property damage insurance in amounts adequate for such purposes and as is customarily carried with respect to works and properties similar to the Project; provided that the amounts and terms of such coverage are satisfactory to the Council and the Authority. In the event the Loan Agreements so require, such insurance shall be made payable to the order of the Authority, the Issuer, the prime contractor and all subcontractors, as their interests may appear. The Issuer shall verify such insurance prior to commencement of construction.

Section 7.16. Mandatory Connections. The mandatory use of the System is essential and necessary for the protection and preservation of the public health, comfort, safety, convenience and welfare of the inhabitants and residents of, and the economy of, the Issuer and in order to assure the rendering harmless of sewage and water-borne waste matter produced or arising within the territory served by the System. Accordingly, every owner, tenant or occupant of any house, dwelling or building located near the System, where sewage will flow by gravity or be transported by such other methods approved by the State Department of Health from such house, dwelling or building into the System, to the extent permitted by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, shall connect with and use the System and shall cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such house, dwelling or building where there is such gravity flow or transportation by such other method approved by the State Department of Health and such house, dwelling or building can be

adequately served by the System, and every such owner, tenant or occupant shall, after a 30-day notice of the availability of the System, pay the rates and charges established therefor.

Any such house, dwelling or building from which emanates sewage or water-borne waste matter and which is not so connected with the System is hereby declared and found to be a hazard to the health, safety, comfort and welfare of the inhabitants of the Issuer and a public nuisance which shall be abated to the extent permitted by law and as promptly as possible by proceedings in a court of competent jurisdiction.

Section 7.17. Completion of Project; Permits and Orders. The Issuer shall complete the Project as promptly as possible and operate and maintain the System as a revenue-producing utility in good condition and in compliance with all federal and state requirements and standards.

The Issuer has obtained all permits required by state and federal laws for the acquisition and construction of the Project, all orders and approvals from the PSC and the Council necessary for the acquisition and construction of the Project and the operation of the System and all approvals for issuance of the Series 2005 Bonds required by state law, with all requisite appeal periods having expired without successful appeal.

Section 7.18. [Reserved.]

Section 7.19. Statutory Mortgage Lien. For the further protection of the Registered Owners of the Series 2005 Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding, shall take effect immediately upon delivery of the Series 2005 Bonds, provided however, that the statutory mortgage lien of the Series 2005 Bonds shall be on a parity with the statutory mortgage lien of the Prior Bonds.

Section 7.20. Compliance with Loan Agreements and Law. The Issuer shall perform, satisfy and comply with all the terms, conditions and requirements of the Loan Agreements and the Act. Notwithstanding anything herein to the contrary, the Issuer will provide the Council with copies of all documents submitted to the Authority.

The Issuer shall also comply with all applicable laws, rules and regulations issued by the Council and the Authority or other state, federal or local bodies in regard to the acquisition and construction of the Project and the operation, maintenance and use of the System.

Section 7.21. Securities Laws Compliance. The Issuer will provide the Authority, in a timely manner, with any and all information that may be requested of it (including its annual audit report, financial statements, related information and notices of

changes in usage and customer base) so that the Authority may comply with the provisions of SEC Rule 15c2-12 (17 CFR Part 240).

ARTICLE VIII

INVESTMENT OF FUNDS

Section 8.01. Investment of Funds. Any monies held as a part of the funds and accounts created by this Bond Legislation other than the Revenue Fund, shall be invested and reinvested by the Commission, the Depository Bank, or such other bank or national banking association holding such fund or account, as the case may be, at the written direction of the Issuer in any Qualified Investments to the fullest extent possible under applicable laws, this Bond Legislation, the need for such monies for the purposes set forth herein and the specific restrictions and provisions set forth in this Section 8.01.

Any investment shall be held in and at all times deemed a part of the fund or account in which such monies were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Depository Bank may make any and all investments permitted by this section through its own bond department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once each year, or more often as reasonably requested by the Issuer, a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Series 2005 Bonds are Outstanding and as long thereafter as necessary to assure the exclusion of interest, if any, on the Series 2005 Bonds from gross income for federal income tax purposes.

Section 8.02. Certificate as to Use of Proceeds. The Issuer shall deliver a certificate as to use of proceeds or other similar certificate to be prepared by nationally recognized bond counsel relating to restrictions on the use of proceeds of the Series 2005 Bonds as a condition to issuance of the Series 2005 Bonds. In addition, the Issuer covenants (i) to comply with the Code and all Regulations from time to time in effect and applicable to the Series 2005 Bonds as may be necessary in order to maintain the status of the Series 2005 Bonds as governmental bonds; (ii) that it shall not take, or permit or suffer to be

taken, any action with respect to the Issuer's use of the proceeds of the Series 2005 Bonds which would cause any bonds, the interest on which is exempt from federal income taxation under Section 103(a) of the Code, issued by the Authority or the Council, as the case may be, from which the proceeds of the Series 2005 Bonds are derived, to lose their status as tax-exempt bonds; and (iii) to take such action, or refrain from taking such action, as shall be deemed necessary by the Issuer, or requested by the Authority or the Council, to ensure compliance with the covenants and agreements set forth in this Section, regardless of whether such actions may be contrary to any of the provisions of this Resolution.

The Issuer shall annually furnish to the Authority, information with respect to the Issuer's use of the proceeds of the Series 2005 Bonds and any additional information requested by the Authority.

ARTICLE IX

DEFAULT AND REMEDIES

Section 9.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Series 2005 Bonds and the Series 2005 Notes:

(1) If default occurs in the due and punctual payment of the principal of or interest, if any, on the Series 2005 Bonds or the Series 2005 Notes; or

(2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Series 2005 Bonds or the Series 2005 Notes set forth in this Bond Legislation, any supplemental resolution or in the Series 2005 Bonds or the Series 2005 Notes, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Commission, the Depository Bank, the Registrar, the Paying Agent or a Registered Owner; or

(3) If the Issuer files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America; or

(4) If default occurs with respect to the Prior Bonds or the Prior Resolution.

Section 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of the Series 2005 Bonds or the Series 2005 Notes may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Series 2005 Bonds or the Series 2005 Notes, (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Series 2005 Bonds or the Series 2005 Notes, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Series 2005 Bonds or the Series 2005 Notes, or the rights of such Registered Owners; provided that, all rights and remedies of the Registered Owners of the Series 2005 Bonds shall be on a parity with the of the Registered Owners of the Prior Bonds and provided further that, all rights and remedies of the Registered Owners of the Series 2005 Notes shall be junior and subordinate to the Registered Owners of the Prior Bonds and the Series 2005 Bonds.

Section 9.03. Appointment of Receiver. Any Registered Owner of a Series 2005 Bond may, by proper legal action, compel the performance of the duties of the Issuer under the Bond Legislation and the Act, including, the completion of the Project and after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to such Series 2005 Bonds, any Registered Owner of a Series 2005 Bond shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the Project on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Series 2005 Bonds and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Bond Legislation and the Act.

The receiver so appointed shall forthwith, directly or by his or her or its agents and attorneys, enter into and upon and take possession of all facilities of said System and shall hold, operate and maintain, manage and control such facilities, and each and every part thereof, and in the name of the Issuer exercise all the rights and powers of the Issuer with respect to said facilities as the Issuer itself might exercise.

Whenever all that is due upon the Series 2005 Bonds and interest thereon and under any covenants of this Bond Legislation for reserve, sinking or other funds and upon any other obligations and interest thereon having a charge, lien or encumbrance upon the revenues of the System shall have been paid and made good, and all defaults under the provisions of this Bond Legislation shall have been cured and made good, possession of the System shall be surrendered to the Issuer upon the entry of an order of the court to that effect. Upon any subsequent default, any Registered Owner of any Bonds shall have the same right to secure the further appointment of a receiver upon any such subsequent default.

Such receiver, in the performance of the powers hereinabove conferred upon him or her or it, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby, and a successor receiver may be appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and Registered Owners of the Series 2005 Bonds. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the completion of the Project and

the possession, operation and maintenance of the System for the sole purpose of the protection of both the Issuer and Registered Owners of such Series 2005 Bonds and the curing and making good of any Event of Default with respect thereto under the provisions of this Bond Legislation, and the title to and ownership of said System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System.

ARTICLE X

PAYMENT OF BONDS AND NOTES

Section 10.01. Payment of Bonds. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the Registered Owners of the Series 2005 Bonds, the principal of and interest, if any, due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Net Revenues and other monies and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2005 Bonds shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest, if any, on the Series 2005 Bonds from gross income for federal income tax purposes.

Section 10.02. Payment of Notes. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the Registered Owners of the Series 2005 Notes, the principal of and interest, if any, due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of proceeds from any additional sewerage system revenue bonds or refunding revenue bonds, any additional bond anticipation notes or any additional grants pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2005 Notes shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest, if any, on the Series 2005 Notes from gross income for federal income tax purposes.

ARTICLE XI

MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to issuance of the Series 2005 Bonds, this Resolution may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2005 Bonds, no material modification or amendment of this Resolution, or of any resolution amendatory or supplemental hereto, that would materially and adversely affect the rights of Registered Owners of the Series 2005 Bonds shall be made without the consent in writing of the Registered Owners of the Series 2005 Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of the Series 2005 Bonds or the rate of interest, thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest, if any, out of the funds herein respectively pledged therefor without the consent of the Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of the Series 2005 Bonds, required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Bond Legislation may be amended without the consent of any Registered Owner as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the exclusion of interest, if any, on the Series 2005 Bonds from gross income of the Registered Owner thereof.

Section 11.02. Bond Legislation Constitutes Contract. The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Registered Owners of the Series 2005 Bonds, and no change, variation or alteration of any kind of the provisions of the Bond Legislation shall be made in any manner, except as in this Bond Legislation provided.

Section 11.03. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Resolution should be held invalid by any court of competent jurisdiction, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution, the Supplemental Resolution, the Series 2005 Bonds or the Series 2005 Notes.

Section 11.04. Headings, Etc. The headings and catchlines of the articles, sections and subsections hereof are for convenience of reference only, and shall not affect in any way the meaning or interpretation of any provision hereof.

Section 11.05. Conflicting Provisions Repealed; Prior Resolution. All orders or resolutions, or parts thereof, in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby repealed; provided that, in the event of any conflict between this

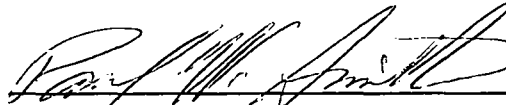
Bond Legislation and the Prior Resolution, the Prior Resolution shall control (unless less restrictive), so long as the Prior Bonds are outstanding.


Section 11.06. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and at the adoption of this Resolution do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Chairman, Secretary and members of the Governing Body were at all times when any actions in connection with this Resolution occurred and are duly in office and duly qualified for such office.

Section 11.07. Effective Date. This Resolution shall take effect immediately upon adoption.

Adopted this 22nd day of September, 2005.


Chairperson


Member

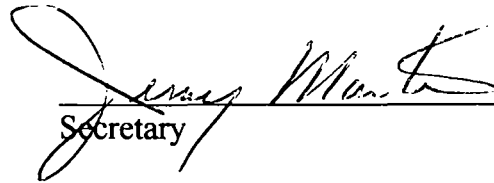

Member

CERTIFICATION

Certified a true copy of a Resolution duly adopted by the Public Service Board
of LUBECK PUBLIC SERVICE DISTRICT on the 22nd day of September, 2005.

Dated this 27th day of September, 2005.

[SEAL]


Secretary

09/16/05
101090/00309

LUBECK PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2005 A
(WEST VIRGINIA INFRASTRUCTURE FUND),
SEWER REVENUE BONDS, SERIES 2005 B
(WEST VIRGINIA INFRASTRUCTURE FUND) AND
SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2005
(WEST VIRGINIA INFRASTRUCTURE FUND)

2.5

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO THE PRINCIPAL AMOUNT, DATE, MATURITY DATE, INTEREST RATE, PAYMENT SCHEDULE, SALE PRICE AND OTHER TERMS OF THE LUBECK PUBLIC SERVICE DISTRICT SEWER REVENUE BONDS, SERIES 2005 A (WEST VIRGINIA INFRASTRUCTURE FUND), SEWER REVENUE BONDS, SERIES 2005 B (WEST VIRGINIA INFRASTRUCTURE FUND) AND SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2005 (WEST VIRGINIA INFRASTRUCTURE FUND); AUTHORIZING AND APPROVING THE SALE AND DELIVERY OF SUCH BONDS AND NOTES TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; APPROVING AND RATIFYING THE LOAN AGREEMENTS WITH RESPECT TO SUCH BONDS AND NOTES; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS AND NOTES.

WHEREAS, the Public Service Board (the "Governing Body") of Lubeck Public Service District (the "Issuer") has duly and officially adopted a Resolution on September 22, 2005 (the "Resolution"), entitled:

RESOLUTION AUTHORIZING THE REFUNDING OF THE SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 1999 (WEST VIRGINIA INFRASTRUCTURE FUND) OF LUBECK PUBLIC SERVICE DISTRICT AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE DISTRICT OF NOT MORE THAN \$7,879,443 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2005 A (WEST VIRGINIA INFRASTRUCTURE FUND); NOT MORE THAN \$2,411,178 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2005 B (WEST VIRGINIA INFRASTRUCTURE FUND); AND NOT MORE THAN \$6,278,679 IN AGGREGATE PRINCIPAL AMOUNT OF SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2005 (WEST VIRGINIA INFRASTRUCTURE

FUND); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING THE LOAN AGREEMENTS RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

WHEREAS, the capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Resolution when used herein;

WHEREAS, the Resolution provides for the issuance of the Sewer Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), the Sewer Revenue Bonds, Series 2005 B (West Virginia Infrastructure Fund), and the Sewerage System Bond Anticipation Notes, Series 2005 (West Virginia Infrastructure Fund), of the Issuer, in the respective aggregate principal amounts not to exceed \$7,879,443, \$2,411,178 and \$6,278,679 (collectively, the "Bonds" and the "Notes" or individually, the "Series 2005 A Bonds," the "Series 2005 B Bonds" and the "Series 2005 Notes"), and has authorized the execution and delivery of loan agreements relating to the Bonds and the Notes, including all schedules and exhibits attached thereto (collectively, the "Loan Agreement"), by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), all in accordance with Chapter 16, Article 13A and Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended (collectively, the "Act"); and in the Resolution it is provided that the exact principal amount, date, maturity date, interest rate, payment schedule, sale price and other terms of the Bonds and the Notes should be established by a supplemental resolution, and that other matters relating to the Bonds and the Notes be therein provided for;

WHEREAS, the Loan Agreement has been presented to the Issuer at this meeting;

WHEREAS, the Bonds and the Notes are proposed to be purchased by the Authority pursuant to the Loan Agreement; and

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted, that the Loan Agreement be approved and ratified, that the exact principal amount, date, maturity date, interest rate, payment schedule, sale price and other terms of the Bonds and the Notes be fixed hereby in the manner stated herein, and that other matters relating to the Bonds and the Notes be herein provided for.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF
LUBECK PUBLIC SERVICE DISTRICT:

Section 1. Pursuant to the Resolution and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the following bonds and notes of the Issuer:

A. Sewer Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), of the Issuer, originally represented by a single bond, numbered AR-1, in the original principal amount of \$7,879,443. The Series 2005 A Bonds shall be dated the date of delivery, shall finally mature March 1, 2039, and shall bear no interest. The principal of the Series 2005 A Bonds shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing June 1, 2021, in the amounts set forth in the Schedule Y attached to the Loan Agreement and incorporated in and made a part of the Series 2005 A Bonds. The Series 2005 A Bonds shall be subject to redemption upon the written consent of the Authority and the Council, and upon payment of the redemption premium, if any, and otherwise in compliance with the Loan Agreement, so long as the Authority shall be the Registered Owner of the Series 2005 A Bonds.

B. Sewer Revenue Bonds, Series 2005 B (West Virginia Infrastructure Fund), of the Issuer, originally represented by a single bond, numbered BR-1, in the original principal amount of \$2,411,178. The Series 2005 B Bonds shall be dated the date of delivery, shall finally mature March 1, 2039, and shall bear no interest. The principal of the Series 2005 B Bonds shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 2009, in the amounts set forth in the Schedule Y attached to the Loan Agreement and incorporated in and made a part of the Series 2005 B Bonds. The Series 2005 B Bonds shall be subject to redemption upon the written consent of the Authority and the Council, and upon payment of the redemption premium, if any, and otherwise in compliance with the Loan Agreement, so long as the Authority shall be the Registered Owner of the Series 2005 B Bonds.

C. Sewerage System Bond Anticipation Notes, Series 2005 (West Virginia Infrastructure Fund), of the Issuer, originally represented by a single note, numbered R-1, in the original principal amount of \$6,278,679. The Notes shall be dated the date of delivery, shall finally mature March 1, 2010, and shall bear no interest. The principal of the Notes shall be payable in annual installments of One Hundred Dollars (\$100) on June 1, 2006, June 1, 2007, June 1, 2008, and June 1, 2009, and with the entire outstanding principal amount payable in full on March 1, 2010, as set forth in the Notes and the Schedule Y attached to the Loan Agreement. The Notes shall be subject to redemption upon the written consent of the Authority and the Council, and upon payment of the redemption premium, if any, and otherwise in compliance with the Loan Agreement, so long as the Authority shall be the Registered

Owner of the Notes.

Section 2. All other provisions relating to the Bonds and the Notes and the text of the Bonds and the Notes shall be in substantially the form provided in the Resolution.

Section 3. The Issuer hereby ratifies, approves and accepts the Loan Agreement, including all schedules and exhibits attached thereto, a copy of which is incorporated herein by reference, and the execution and delivery of the Loan Agreement by the Chairperson and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, approved and directed. The Issuer hereby affirms all covenants and representations made in the Loan Agreement and in the applications to the Council and the Authority. The price of the Bonds and the Notes shall be 100% of par value, there being no interest accrued thereon.

Section 4. The Issuer hereby appoints and designates United Bank, Inc., Charleston, West Virginia, to serve as Registrar (the "Registrar") for the Bonds and the Notes under the Resolution and approves and accepts the Registrar's Agreement to be dated the date of delivery of the Bonds and the Notes, by and between the Issuer and the Registrar, and the execution and delivery of the Registrar's Agreement by the Chairperson, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, directed and approved.

Section 5. The Issuer hereby appoints and designates the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Commission"), to serve as Paying Agent for the Bonds and the Notes under the Resolution.

Section 6. The Issuer hereby appoints and designates United Bank, Inc., Parkersburg, West Virginia, to serve as the Depository Bank under the Resolution.

Section 7. On the Closing Date, the Issuer shall deliver the Series 2005 A Bonds, the Series 2005 B Bonds and the Series 2005 Notes to the Authority in exchange for the Prior Notes, which exchange shall release and discharge the liens, pledges and encumbrances securing the Prior Notes.

Section 8. Series 2005 Notes proceeds in the amount of \$20,000 shall be used to pay costs of issuance of the Bonds and the Notes.

Section 9. The Chairperson and Secretary are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Bonds and the Notes hereby and by the Resolution approved and provided for, to the end that the Bonds and the Notes may be delivered to the Authority pursuant to the Loan Agreement on or about September 27, 2005.

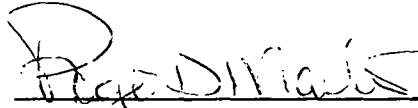
Section 10. The refunding of the Prior Notes and the financing thereof with proceeds of the Bonds and the Notes are in the public interest, serve a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

Section 11. The Issuer hereby determines to invest all moneys in the funds and accounts established by the Resolution held by the Depository Bank until expended, in money market accounts secured by a pledge of Government Obligations, and therefore, the Issuer hereby directs the Depository Bank to invest all moneys in such money market accounts until further directed in writing by the Issuer. Moneys in the Series 2005 A Bonds Sinking Fund, the Series 2005 A Bonds Reserve Account, the Series 2005 B Bonds Sinking Fund and the Series 2005 B Bonds Reserve Account shall be invested by the Commission in the West Virginia Consolidated Fund.

Section 12. The Issuer hereby approves the costs of issuance and authorizes the payment of the same.

Section 13. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this 22nd day of September, 2005.



Chairperson



Member



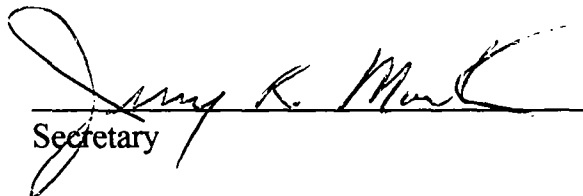
Member

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Public Service Board of LUBECK PUBLIC SERVICE DISTRICT on the 22nd day of September, 2005.

Dated this 27th day of September, 2005.

[SEAL]


Secretary

09/16/05
101090/00309

LUBECK PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2005 A
(WEST VIRGINIA INFRASTRUCTURE FUND),
SEWER REVENUE BONDS, SERIES 2005 B
(WEST VIRGINIA INFRASTRUCTURE FUND) AND
SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2005
(WEST VIRGINIA INFRASTRUCTURE FUND)

2.6

MINUTES ON ADOPTION OF BOND AND NOTE
RESOLUTION AND SUPPLEMENTAL RESOLUTION

On this 27th day of September, 2005, the undersigned duly appointed Secretary of the Public Service Board of Lubeck Public Service District hereby certifies that the following is a true and correct excerpt of the minutes of a special meeting of said Public Service Board:

The Public Service Board of Lubeck Public Service District met in special session, pursuant to notice duly posted, on the 22nd day of September, 2005, in Washington, West Virginia, at the hour of 10:00 a.m.

PRESENT: Roger Martin - Chairperson and Member
Jerry Martin - Secretary and Member
Paul Smith - Treasurer and Member

ABSENT: None

Roger Martin, Chairperson, presided, and Jerry Martin, acted as Secretary. The Chairperson announced that a quorum of members was present and that the meeting was open for any business properly before it.

Thereupon, the Chairperson presented a proposed Bond and Note Resolution in writing entitled:

RESOLUTION AUTHORIZING THE REFUNDING OF THE
SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES
1999 (WEST VIRGINIA INFRASTRUCTURE FUND) OF

LUBECK PUBLIC SERVICE DISTRICT AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE DISTRICT OF NOT MORE THAN \$7,879,443 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2005 A (WEST VIRGINIA INFRASTRUCTURE FUND); NOT MORE THAN \$2,411,178 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2005 B (WEST VIRGINIA INFRASTRUCTURE FUND); AND NOT MORE THAN \$6,278,679 IN AGGREGATE PRINCIPAL AMOUNT OF SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2005 (WEST VIRGINIA INFRASTRUCTURE FUND); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING THE LOAN AGREEMENTS RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

and caused the same to be read and there was discussion. Upon motion duly made and seconded, it was unanimously ordered that said Bond and Note Resolution be adopted and be in full force and effect on and from the date hereof.

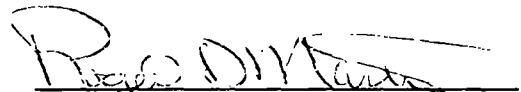
Next, the Chairperson presented a proposed Supplemental Resolution in writing entitled:


SUPPLEMENTAL RESOLUTION PROVIDING AS TO THE PRINCIPAL AMOUNT, DATE, MATURITY DATE, INTEREST RATE, PAYMENT SCHEDULE, SALE PRICE AND OTHER TERMS OF THE LUBECK PUBLIC SERVICE DISTRICT SEWER REVENUE BONDS, SERIES 2005 A (WEST VIRGINIA INFRASTRUCTURE FUND), SEWER REVENUE BONDS, SERIES 2005 B (WEST VIRGINIA INFRASTRUCTURE FUND) AND SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2005 (WEST VIRGINIA INFRASTRUCTURE FUND); AUTHORIZING AND APPROVING THE SALE AND DELIVERY OF SUCH BONDS AND NOTES TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY;

APPROVING AND RATIFYING THE LOAN AGREEMENTS
WITH RESPECT TO SUCH BONDS AND NOTES;
DESIGNATING A REGISTRAR, PAYING AGENT AND
DEPOSITORY BANK; AND MAKING OTHER PROVISIONS
AS TO THE BONDS AND NOTES.

and caused the same to be read and there was discussion. Upon motion duly made and seconded, it was unanimously ordered that said Supplemental Resolution be adopted and be in full force and effect on and from the date hereof.

There being no further business to come before the meeting, on motion duly made and seconded, it was unanimously ordered that the meeting adjourn.


Chairperson


Secretary

CERTIFICATION

I hereby certify that the foregoing action of Lubeck Public Service District remains in full force and effect and has not been amended, rescinded, superseded, repealed or changed.

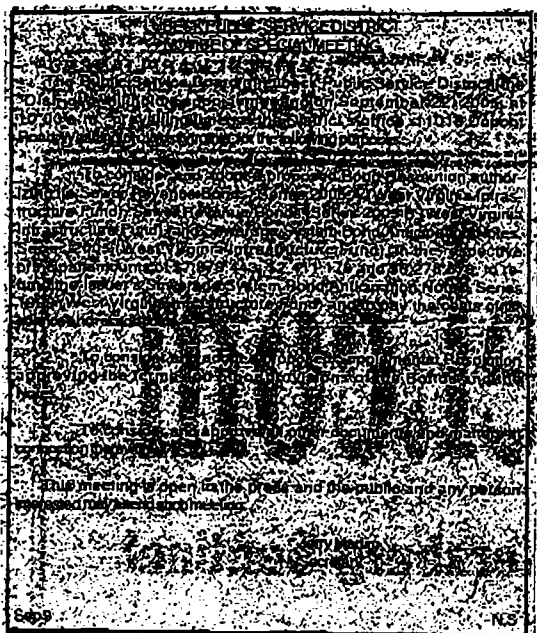
WITNESS my signature as of the date first written above.


Secretary

09/16/05
101090/00309

SHERRY L. BRUNETT

Being first duly sworn, says that the

"Notice of Special Meeting for September 22, 2005"

Hereto attached was printed in the

.....XX Parkersburg News,

.....The Marietta AM,

.....XX The Parkersburg Sentinel,

A daily newspaper published in the City of Parkersburg,

Wood County, West Virginia, forONE... successive

weeks, the first publication and posting thereon being on

the9th.....day of September... 20.05., andsubsequent publication on theN/A.....day (s) of 20.....Printer's Fee \$.....116.62Notarized Signature \$.....2.00

Additional Copy Fee \$.....

Total Due: \$.....118.62

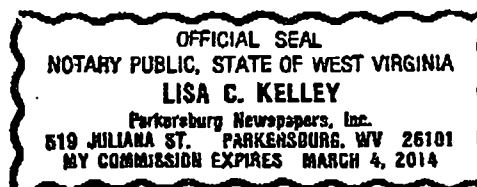
By:.....

Subscribed and sworn to before me this

9th day of September 2005.

Notary Public for Wood County, West Virginia

My commission expires

3-4-14



UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
LUBECK PUBLIC SERVICE DISTRICT
SEWER REVENUE BOND, SERIES 2005 A
(WEST VIRGINIA INFRASTRUCTURE FUND)

SPECIMEN

No. AR-1

\$7,879,443

KNOW ALL MEN BY THESE PRESENTS: That on this 27th day of September, 2005, LUBECK PUBLIC SERVICE DISTRICT, a public service district, public corporation and political subdivision of the State of West Virginia in Wood County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns, the sum of SEVEN MILLION EIGHT HUNDRED SEVENTY NINE THOUSAND FOUR HUNDRED FORTY THREE DOLLARS (\$7,879,443), in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing June 1, 2021, as set forth on the "Debt Service Schedule" attached as EXHIBIT A hereto and incorporated herein by reference.

This Bond shall bear no interest. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent").

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Infrastructure and Jobs Development Council (the "Council"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and between the Issuer and the Authority, on behalf of the Council, dated September 27, 2005.

This Bond is issued to refund the Issuer's Sewerage System Bond Anticipation Notes, Series 1999 (West Virginia Infrastructure Fund) (the "Prior Notes"). The existing public sewerage facilities of the Issuer and any further improvements or extensions thereto are herein

called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13A and Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended (collectively, the "Act"), a Resolution duly adopted by the Issuer on September 22, 2005, and a Supplemental Resolution duly adopted by the Issuer on September 22, 2005 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for this Bond under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS WITH THE ISSUER'S (1) SEWERAGE SYSTEM REVENUE BONDS, SERIES 1999 A (WEST VIRGINIA SRF PROGRAM), DATED MARCH 9, 1999, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$7,950,000; (2) SEWERAGE SYSTEM REVENUE BONDS, SERIES 1999 B (WEST VIRGINIA INFRASTRUCTURE FUND), DATED MARCH 9, 1999, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,000,000; AND (3) SEWER REVENUE BONDS, SERIES 2005 B (WEST VIRGINIA INFRASTRUCTURE FUND), DATED SEPTEMBER 27, 2005, ISSUED CONCURRENTLY HERewith IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,411,178 (COLLECTIVELY, THE "FIRST LIEN BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Net Revenues in favor of the holders of the First Lien Bonds and from monies in the reserve account created under the Bond Legislation for this Bond (the "Series 2005 A Bonds Reserve Account") and unexpended proceeds of this Bond. Such Net Revenues shall be sufficient to pay the principal of and interest, if any, on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same, or the interest, if any, hereon, except from said special fund provided from the Net Revenues, the monies in the Series 2005 A Bonds Reserve Account and unexpended proceeds of this Bond. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest, if any, on this Bond and all other obligations secured by a lien on or payable from such revenues on a parity with this Bond, including the First Lien Bonds; provided however, that so long as there exists in the Series 2005 A Bonds

Reserve Account an amount at least equal to the maximum amount of principal and interest, if any, which will become due on this Bond in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with this Bond, including the First Lien Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of this Bond for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of this Bond are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar (as defined in the Bond Legislation) by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

Subject to the registration requirements set forth herein, this Bond, under the provision of the Act, is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.


All monies received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of refunding the Prior Notes as described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such monies, until so applied, in favor of the registered owner of this Bond.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and at the issuance of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Net Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of this Bond.

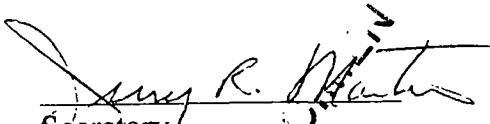
All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, LUBECK PUBLIC SERVICE DISTRICT has caused this Bond to be signed by its Chairperson and its corporate seal to be hereunto affixed and attested by its Secretary, and has caused this Bond to be dated as of the date first written above.

[SEAL]


Chairperson

ATTEST:


Secretary

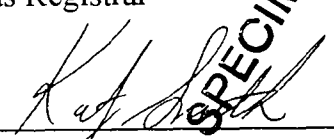
NUMBER
AR-1

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2005 A Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: September 27, 2005.

UNITED BANK, INC.
as Registrar



Authorized Officer

SPECIMEN

AR-1
EXHIBIT A

\$7,879,443

Lubeck Public Service District (West Virginia)

0% Interest Rate

Closing Date: September 27, 2005

Debt Service Schedule

Part 1 of 4

Date	Principal	Coupon	Total P+I
12/01/2005	-	-	-
03/01/2006	-	-	-
06/01/2006	-	-	-
09/01/2006	-	-	-
12/01/2006	-	-	-
03/01/2007	-	-	-
06/01/2007	-	-	-
09/01/2007	-	-	-
12/01/2007	-	-	-
03/01/2008	-	-	-
06/01/2008	-	-	-
09/01/2008	-	-	-
12/01/2008	-	-	-
03/01/2009	-	-	-
06/01/2009	-	-	-
09/01/2009	-	-	-
12/01/2009	-	-	-
03/01/2010	-	-	-
06/01/2010	-	-	-
09/01/2010	-	-	-
12/01/2010	-	-	-
03/01/2011	-	-	-
06/01/2011	-	-	-
09/01/2011	-	-	-
12/01/2011	-	-	-
03/01/2012	-	-	-
06/01/2012	-	-	-
09/01/2012	-	-	-
12/01/2012	-	-	-
03/01/2013	-	-	-
06/01/2013	-	-	-
09/01/2013	-	-	-
12/01/2013	-	-	-
03/01/2014	-	-	-
06/01/2014	-	-	-
09/01/2014	-	-	-
12/01/2014	-	-	-
03/01/2015	-	-	-
06/01/2015	-	-	-
09/01/2015	-	-	-
12/01/2015	-	-	-
03/01/2016	-	-	-
06/01/2016	-	-	-
09/01/2016	-	-	-

\$7,879,443

Lubeck Public Service District (West Virginia)

0% Interest Rate

Closing Date: September 27, 2005

Debt Service Schedule

Part 2 of 4

Date	Principal	Coupon	Total P+I
12/01/2016	-	-	-
03/01/2017	-	-	-
06/01/2017	-	-	-
09/01/2017	-	-	-
12/01/2017	-	-	-
03/01/2018	-	-	-
06/01/2018	-	-	-
09/01/2018	-	-	-
12/01/2018	-	-	-
03/01/2019	-	-	-
06/01/2019	-	-	-
09/01/2019	-	-	-
12/01/2019	-	-	-
03/01/2020	-	-	-
06/01/2020	-	-	-
09/01/2020	-	-	-
12/01/2020	-	-	-
03/01/2021	-	-	-
06/01/2021	109,436.71	-	109,436.71
09/01/2021	109,436.71	-	109,436.71
12/01/2021	109,436.71	-	109,436.71
03/01/2022	109,436.71	-	109,436.71
06/01/2022	109,436.71	-	109,436.71
09/01/2022	109,436.71	-	109,436.71
12/01/2022	109,436.71	-	109,436.71
03/01/2023	109,436.71	-	109,436.71
06/01/2023	109,436.71	-	109,436.71
09/01/2023	109,436.71	-	109,436.71
12/01/2023	109,436.71	-	109,436.71
03/01/2024	109,436.71	-	109,436.71
06/01/2024	109,436.71	-	109,436.71
09/01/2024	109,436.71	-	109,436.71
12/01/2024	109,436.71	-	109,436.71
03/01/2025	109,436.71	-	109,436.71
06/01/2025	109,436.71	-	109,436.71
09/01/2025	109,436.71	-	109,436.71
12/01/2025	109,436.71	-	109,436.71
03/01/2026	109,436.71	-	109,436.71
06/01/2026	109,436.71	-	109,436.71
09/01/2026	109,436.71	-	109,436.71
12/01/2026	109,436.71	-	109,436.71
03/01/2027	109,436.71	-	109,436.71
06/01/2027	109,436.71	-	109,436.71
09/01/2027	109,436.71	-	109,436.71

\$7,879,443

Lubeck Public Service District (West Virginia)

0% Interest Rate

Closing Date: September 27, 2005

Debt Service Schedule**Part 3 of 4**

Date	Principal	Coupon	Total P+I
12/01/2027	109,436.71	-	109,436.71
03/01/2028	109,436.71	-	109,436.71
06/01/2028	109,436.71	-	109,436.71
09/01/2028	109,436.71	-	109,436.71
12/01/2028	109,436.71	-	109,436.71
03/01/2029	109,436.71	-	109,436.71
06/01/2029	109,436.71	-	109,436.71
09/01/2029	109,436.71	-	109,436.71
12/01/2029	109,436.71	-	109,436.71
03/01/2030	109,436.71	-	109,436.71
06/01/2030	109,436.71	-	109,436.71
09/01/2030	109,436.71	-	109,436.71
12/01/2030	109,436.71	-	109,436.71
03/01/2031	109,436.71	-	109,436.71
06/01/2031	109,436.71	-	109,436.71
09/01/2031	109,436.71	-	109,436.71
12/01/2031	109,436.71	-	109,436.71
03/01/2032	109,436.71	-	109,436.71
06/01/2032	109,436.71	-	109,436.71
09/01/2032	109,436.71	-	109,436.71
12/01/2032	109,436.71	-	109,436.71
03/01/2033	109,436.71	-	109,436.71
06/01/2033	109,436.71	-	109,436.71
09/01/2033	109,436.71	-	109,436.71
12/01/2033	109,436.71	-	109,436.71
03/01/2034	109,436.71	-	109,436.71
06/01/2034	109,436.71	-	109,436.71
09/01/2034	109,436.71	-	109,436.71
12/01/2034	109,436.71	-	109,436.71
03/01/2035	109,436.71	-	109,436.71
06/01/2035	109,436.71	-	109,436.71
09/01/2035	109,436.71	-	109,436.71
12/01/2035	109,436.71	-	109,436.71
03/01/2036	109,436.71	-	109,436.71
06/01/2036	109,436.70	-	109,436.70
09/01/2036	109,436.70	-	109,436.70
12/01/2036	109,436.70	-	109,436.70
03/01/2037	109,436.70	-	109,436.70
06/01/2037	109,436.70	-	109,436.70
09/01/2037	109,436.70	-	109,436.70
12/01/2037	109,436.70	-	109,436.70
03/01/2038	109,436.70	-	109,436.70
06/01/2038	109,436.70	-	109,436.70

\$7,879,443

Lubeck Public Service District (West Virginia)

0% Interest Rate

Closing Date: September 27, 2005

Debt Service Schedule**Part 4 of 4**

Date	Principal	Coupon	Total P+I
09/01/2038	109,436.70	-	109,436.70
12/01/2038	109,436.70	-	109,436.70
03/01/2039	109,436.70	-	109,436.70
Total	\$7,879,443.00	-	\$7,879,443.00

Yield Statistics

Bond Year Dollars	\$193,462.21
Average Life	24.553 Years
Average Coupon	-
Net Interest Cost (NIC)	-
True Interest Cost (TIC)	4.72E-10
Bond Yield for Arbitrage Purposes	4.72E-10
All Inclusive Cost (AIC)	4.72E-10

IRS Form 8038

Net Interest Cost	-
Weighted Average Maturity	24.553 Years

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto _____ the within Bond and does hereby
irrevocably constitute and appoint _____,
Attorney to transfer the said Bond on the books kept for registration of the within Bond of the
said Issuer with full power of substitution in the premises.

Dated: _____, _____.

In the presence of:

BR-1

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
LUBECK PUBLIC SERVICE DISTRICT
SEWER REVENUE BOND, SERIES 2005 B
(WEST VIRGINIA INFRASTRUCTURE FUND)

No. BR-1

SPECIMEN
\$2,411,178

KNOW ALL MEN BY THESE PRESENTS: That on this 27th day of September, 2005, LUBECK PUBLIC SERVICE DISTRICT, a public service district, public corporation and political subdivision of the State of West Virginia in Wood County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns, the sum of TWO MILLION FOUR HUNDRED ELEVEN THOUSAND ONE HUNDRED SEVENTY EIGHT DOLLARS (\$2,411,178), in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 2009, as set forth on the "Debt Service Schedule" attached as EXHIBIT A hereto and incorporated herein by reference.

This Bond shall bear no interest. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent").

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Infrastructure and Jobs Development Council (the "Council"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and between the Issuer and the Authority, on behalf of the Council, dated September 27, 2005.

This Bond is issued to refund the Issuer's Sewerage System Bond Anticipation Notes, Series 1999 (West Virginia Infrastructure Fund) (the "Prior Notes"). The existing public sewerage facilities of the Issuer and any further improvements or extensions thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly

Chapter 16, Article 13A and Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended (collectively, the "Act"), a Resolution duly adopted by the Issuer on September 22, 2005, and a Supplemental Resolution duly adopted by the Issuer on September 22, 2005 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for this Bond under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS WITH THE ISSUER'S (1) SEWERAGE SYSTEM REVENUE BONDS, SERIES 1999 A (WEST VIRGINIA SRF PROGRAM), DATED MARCH 9, 1999, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$7,950,000; (2) SEWERAGE SYSTEM REVENUE BONDS, SERIES 1999 B (WEST VIRGINIA INFRASTRUCTURE FUND), DATED MARCH 9, 1999, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,000,000; AND (3) SEWER REVENUE BONDS, SERIES 2005 A (WEST VIRGINIA INFRASTRUCTURE FUND), DATED SEPTEMBER 27, 2005, ISSUED CONCURRENTLY HERewith IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$7,879,443 (COLLECTIVELY, THE "FIRST LIEN BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Net Revenues in favor of the holders of the First Lien Bonds and from monies in the reserve account created under the Bond Legislation for this Bond (the "Series 2005 B Bonds Reserve Account") and unexpended proceeds of this Bond. Such Net Revenues shall be sufficient to pay the principal of and interest, if any, on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same, or the interest, if any, hereon, except from said special fund provided from the Net Revenues, the monies in the Series 2005 B Bonds Reserve Account and unexpended proceeds of this Bond. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest, if any, on this Bond and all other obligations secured by a lien on or payable from such revenues on a parity with this Bond, including the First Lien Bonds; provided however, that so long as there exists in the Series 2005 B Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest, if any, which will become due on this Bond in the then current or any succeeding year, and in

the respective reserve accounts established for any other obligations outstanding on a parity with this Bond, including the First Lien Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of this Bond for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of this Bond are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar (as defined in the Bond Legislation) by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

Subject to the registration requirements set forth herein, this Bond, under the provision of the Act, is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All monies received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of refunding the Prior Notes as described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such monies, until so applied, in favor of the registered owner of this Bond.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and at the issuance of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Net Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of this Bond.

All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.


BR-1

IN WITNESS WHEREOF, LUBECK PUBLIC SERVICE DISTRICT has caused this Bond to be signed by its Chairperson and its corporate seal to be hereunto affixed and attested by its Secretary, and has caused this Bond to be dated as of the date first written above.

[SEAL]


Chairperson

ATTEST:


Secretary

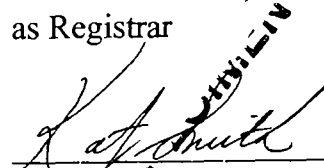
BR-1

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2005 B Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: September 27, 2005.

UNITED BANK, INC.,
as Registrar


Authorized Officer

BR-1

EXHIBIT A

\$2,411,178

Lubeck Public Service District (West Virginia)

0% Interest Rate

Closing Date: September 27, 2005

Debt Service Schedule

Part 1 of 4

Date	Principal	Coupon	Total P+I
12/01/2005	-	-	-
03/01/2006	-	-	-
06/01/2006	-	-	-
09/01/2006	-	-	-
12/01/2006	-	-	-
03/01/2007	-	-	-
06/01/2007	-	-	-
09/01/2007	-	-	-
12/01/2007	-	-	-
03/01/2008	-	-	-
06/01/2008	-	-	-
09/01/2008	-	-	-
12/01/2008	-	-	-
03/01/2009	-	-	-
06/01/2009	-	-	-
09/01/2009	20,262.00	-	20,262.00
12/01/2009	20,262.00	-	20,262.00
03/01/2010	20,262.00	-	20,262.00
06/01/2010	20,262.00	-	20,262.00
09/01/2010	20,262.00	-	20,262.00
12/01/2010	20,262.00	-	20,262.00
03/01/2011	20,262.00	-	20,262.00
06/01/2011	20,262.00	-	20,262.00
09/01/2011	20,262.00	-	20,262.00
12/01/2011	20,262.00	-	20,262.00
03/01/2012	20,262.00	-	20,262.00
06/01/2012	20,262.00	-	20,262.00
09/01/2012	20,262.00	-	20,262.00
12/01/2012	20,262.00	-	20,262.00
03/01/2013	20,262.00	-	20,262.00
06/01/2013	20,262.00	-	20,262.00
09/01/2013	20,262.00	-	20,262.00
12/01/2013	20,262.00	-	20,262.00
03/01/2014	20,262.00	-	20,262.00
06/01/2014	20,262.00	-	20,262.00
09/01/2014	20,262.00	-	20,262.00
12/01/2014	20,262.00	-	20,262.00
03/01/2015	20,262.00	-	20,262.00
06/01/2015	20,262.00	-	20,262.00
09/01/2015	20,262.00	-	20,262.00
12/01/2015	20,262.00	-	20,262.00
03/01/2016	20,262.00	-	20,262.00
06/01/2016	20,262.00	-	20,262.00
09/01/2016	20,262.00	-	20,262.00

\$2,411,178

Lubeck Public Service District (West Virginia)

0% Interest Rate

Closing Date: September 27, 2005

Debt Service Schedule**Part 2 of 4**

Date	Principal	Coupon	Total P+I
12/01/2016	20,262.00	-	20,262.00
03/01/2017	20,262.00	-	20,262.00
06/01/2017	20,262.00	-	20,262.00
09/01/2017	20,262.00	-	20,262.00
12/01/2017	20,262.00	-	20,262.00
03/01/2018	20,262.00	-	20,262.00
06/01/2018	20,262.00	-	20,262.00
09/01/2018	20,262.00	-	20,262.00
12/01/2018	20,262.00	-	20,262.00
03/01/2019	20,262.00	-	20,262.00
06/01/2019	20,262.00	-	20,262.00
09/01/2019	20,262.00	-	20,262.00
12/01/2019	20,262.00	-	20,262.00
03/01/2020	20,262.00	-	20,262.00
06/01/2020	20,262.00	-	20,262.00
09/01/2020	20,262.00	-	20,262.00
12/01/2020	20,262.00	-	20,262.00
03/01/2021	20,262.00	-	20,262.00
06/01/2021	20,262.00	-	20,262.00
09/01/2021	20,262.00	-	20,262.00
12/01/2021	20,262.00	-	20,262.00
03/01/2022	20,262.00	-	20,262.00
06/01/2022	20,262.00	-	20,262.00
09/01/2022	20,262.00	-	20,262.00
12/01/2022	20,262.00	-	20,262.00
03/01/2023	20,262.00	-	20,262.00
06/01/2023	20,262.00	-	20,262.00
09/01/2023	20,262.00	-	20,262.00
12/01/2023	20,262.00	-	20,262.00
03/01/2024	20,262.00	-	20,262.00
06/01/2024	20,262.00	-	20,262.00
09/01/2024	20,262.00	-	20,262.00
12/01/2024	20,262.00	-	20,262.00
03/01/2025	20,262.00	-	20,262.00
06/01/2025	20,262.00	-	20,262.00
09/01/2025	20,262.00	-	20,262.00
12/01/2025	20,262.00	-	20,262.00
03/01/2026	20,262.00	-	20,262.00
06/01/2026	20,262.00	-	20,262.00
09/01/2026	20,262.00	-	20,262.00
12/01/2026	20,262.00	-	20,262.00
03/01/2027	20,262.00	-	20,262.00
06/01/2027	20,262.00	-	20,262.00
09/01/2027	20,262.00	-	20,262.00

\$2,411,178

Lubeck Public Service District (West Virginia)

0% Interest Rate

Closing Date: September 27, 2005

Debt Service Schedule**Part 3 of 4**

Date	Principal	Coupon	Total P+I
12/01/2027	20,262.00	-	20,262.00
03/01/2028	20,262.00	-	20,262.00
06/01/2028	20,262.00	-	20,262.00
09/01/2028	20,262.00	-	20,262.00
12/01/2028	20,262.00	-	20,262.00
03/01/2029	20,262.00	-	20,262.00
06/01/2029	20,262.00	-	20,262.00
09/01/2029	20,262.00	-	20,262.00
12/01/2029	20,262.00	-	20,262.00
03/01/2030	20,262.00	-	20,262.00
06/01/2030	20,262.00	-	20,262.00
09/01/2030	20,262.00	-	20,262.00
12/01/2030	20,262.00	-	20,262.00
03/01/2031	20,262.00	-	20,262.00
06/01/2031	20,262.00	-	20,262.00
09/01/2031	20,262.00	-	20,262.00
12/01/2031	20,262.00	-	20,262.00
03/01/2032	20,262.00	-	20,262.00
06/01/2032	20,262.00	-	20,262.00
09/01/2032	20,262.00	-	20,262.00
12/01/2032	20,262.00	-	20,262.00
03/01/2033	20,262.00	-	20,262.00
06/01/2033	20,262.00	-	20,262.00
09/01/2033	20,262.00	-	20,262.00
12/01/2033	20,262.00	-	20,262.00
03/01/2034	20,262.00	-	20,262.00
06/01/2034	20,262.00	-	20,262.00
09/01/2034	20,262.00	-	20,262.00
12/01/2034	20,262.00	-	20,262.00
03/01/2035	20,262.00	-	20,262.00
06/01/2035	20,262.00	-	20,262.00
09/01/2035	20,262.00	-	20,262.00
12/01/2035	20,262.00	-	20,262.00
03/01/2036	20,262.00	-	20,262.00
06/01/2036	20,262.00	-	20,262.00
09/01/2036	20,262.00	-	20,262.00
12/01/2036	20,262.00	-	20,262.00
03/01/2037	20,262.00	-	20,262.00
06/01/2037	20,262.00	-	20,262.00
09/01/2037	20,262.00	-	20,262.00
12/01/2037	20,262.00	-	20,262.00
03/01/2038	20,262.00	-	20,262.00
06/01/2038	20,262.00	-	20,262.00

\$2,411,178

Lubeck Public Service District (West Virginia)

0% Interest Rate

Closing Date: September 27, 2005

Debt Service Schedule

Part 4 of 4

Date	Principal	Coupon	Total P+I
09/01/2038	20,262.00	-	20,262.00
12/01/2038	20,262.00	-	20,262.00
03/01/2039	20,262.00	-	20,262.00
Total	\$2,411,178.00	-	\$2,411,178.00

Yield Statistics

Bond Year Dollars	\$45,035.45
Average Life	18.678 Years
Average Coupon	-
Net Interest Cost (NIC)	-
True Interest Cost (TIC)	-9.66E-15
Bond Yield for Arbitrage Purposes	-9.66E-15
All Inclusive Cost (AIC)	-9.66E-15

IRS Form 8038

Net Interest Cost	-
Weighted Average Maturity	18.678 Years

BR-1

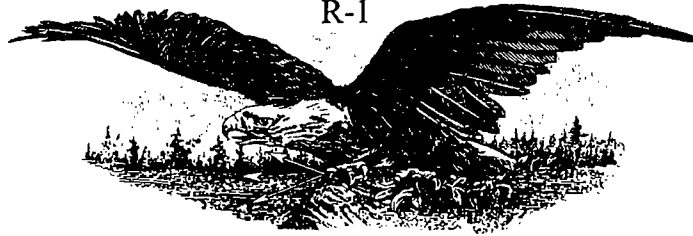
ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto _____ the within Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Issuer with full power of substitution in the premises.

Dated: _____, _____.

In the presence of:

R-1



UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
LUBECK PUBLIC SERVICE DISTRICT
SEWERAGE SYSTEM BOND ANTICIPATION NOTE, SERIES 2005
(WEST VIRGINIA INFRASTRUCTURE FUND)

No. R-1

SPECIMEN

\$6,278,679

KNOW ALL MEN BY THESE PRESENTS: That on this 27th day of September, 2005, LUBECK PUBLIC SERVICE DISTRICT, a public service district, public corporation and political subdivision of the State of West Virginia, in Wood County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns, the sum of SIX MILLION TWO HUNDRED SEVENTY EIGHT THOUSAND SIX HUNDRED SEVENTY NINE DOLLARS (\$6,278,679), in annual installments of One Hundred Dollars (\$100) on June 1, 2006, June 1, 2007, June 1, 2008, and June 1, 2009, and with the entire outstanding principal amount payable in full on March 1, 2010.

This Note shall bear no interest. The principal of this Note is payable in any coin or currency which on the date of payment thereof is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent").

This Note may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Infrastructure and Jobs Development Council (the "Council") and under the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement dated September 27, 2005, between the Issuer and the Authority, on behalf of the Council.

This Note is issued to refund the Issuer's Sewerage System Bond Anticipation Notes, Series 1999 (West Virginia Infrastructure Fund) (the "Prior Notes") and to pay certain costs of issuance hereof and related costs. This Note is issued under the authority of and in

full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13A and Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended (collectively, the "Act"), a Resolution duly adopted by the Issuer on September 22, 2005, and a Supplemental Resolution duly adopted by the Issuer on September 22, 2005 (collectively, the "Resolution"), and is subject to all the terms and conditions thereof.

THIS NOTE IS ISSUED JUNIOR AND SUBORDINATE WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS TO THE ISSUER'S (1) SEWERAGE SYSTEM REVENUE BONDS, SERIES 1999 A (WEST VIRGINIA SRF PROGRAM), DATED MARCH 9, 1999, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$7,950,000; (2) SEWERAGE SYSTEM REVENUE BONDS, SERIES 1999 B (WEST VIRGINIA INFRASTRUCTURE FUND), DATED MARCH 9, 1999, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,000,000; (3) SEWER REVENUE BONDS, SERIES 2005 A (WEST VIRGINIA INFRASTRUCTURE FUND), DATED SEPTEMBER 27, 2005, ISSUED CONCURRENTLY HERewith IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$7,879,443; AND (4) SEWER REVENUE BONDS, SERIES 2005 B (WEST VIRGINIA INFRASTRUCTURE FUND), DATED SEPTEMBER 27, 2005, ISSUED CONCURRENTLY HERewith IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,411,178.

This Note is payable solely from proceeds of any additional sewerage system revenue bonds or refunding revenue bonds of the Issuer, any additional grants (other than Council grants) which the Issuer may receive and any additional bond anticipation notes which the Issuer may issue from time to time upon maturity of this Note. Money from these sources shall be deposited in the Series 2005 Notes Payment Fund established under the Resolution for the prompt payment of this Note.

This Note does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same, except from the sources set forth above. Pursuant to the Resolution, the Issuer has entered into certain covenants with the Authority, for the terms of which reference is made to the Resolution. Remedies provided the Authority are exclusively as provided in the Resolution, to which reference is here made for a detailed description thereof.

This Note is transferable, as provided in the Resolution, only upon the books of the Registrar (as defined in the Resolution) by the registered owner or its attorney duly authorized in writing, upon the surrender of this Note, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

This Note, under the provision of the Act, is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Note, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law, shall be applied solely to the payment of the costs of refunding the Prior Notes and costs of issuance hereof as described in the Resolution, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the registered owner of this Note.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and at the issuance of this Note do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Note, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia.


All provisions of the Resolution and the statutes under which this Note is issued shall be deemed to be a part of the contract evidenced by this Note, to the same extent as if written fully herein.

NUMBER
R-1

IN WITNESS WHEREOF, LUBECK PUBLIC SERVICE DISTRICT has caused this Note to be signed by its Chairperson and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Secretary, and has caused this Note to be dated as of the date first written above.

[SEAL.]


Chairperson

ATTEST:

Secretary

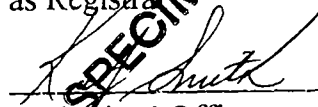
R-1

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Note is one of the Notes described in the within-mentioned Resolution and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: September 27, 2005

UNITED BANK, INC.,
as Registrar


Authorized Officer

NUMBER
R-1

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto _____

_____ the within Note and does hereby irrevocably constitute and appoint _____, Attorney to transfer the said Note on the books kept for registration of the within Note of the said Issuer, with full power of substitution in the premises.

Dated: _____, ____.

In the presence of:

BOND REGISTER

2.9 (A)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
LUBECK PUBLIC SERVICE DISTRICT
SEWER REVENUE BOND, SERIES 2005 A
(WEST VIRGINIA INFRASTRUCTURE FUND)

<u>Bond Number</u>	<u>Principal Amount</u>	<u>Date of Bond</u>
No. AR-1	\$7,879,443	September 27, 2005

NO WRITING ON THIS BOND REGISTER EXCEPT BY THE REGISTRAR

Name of Registered Owner:

West Virginia Water Development Authority
180 Association Drive
Charleston, West Virginia 25311

Signature of Registrar:

United Bank, Inc.


Authorized Representative

08/26/05
101090/00309

M0464106.1

BOND REGISTER

2.9 (B)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
LUBECK PUBLIC SERVICE DISTRICT
SEWER REVENUE BOND, SERIES 2005 B
(WEST VIRGINIA INFRASTRUCTURE FUND)

<u>Bond Number</u>	<u>Principal Amount</u>	<u>Date of Bond</u>
No. BR-1	\$2,411,178	September 27, 2005

NO WRITING ON THIS BOND REGISTER EXCEPT BY THE REGISTRAR

Name of Registered Owner:

West Virginia Water Development Authority
180 Association Drive
Charleston, West Virginia 25311

Signature of Registrar:

United Bank, Inc.



Authorized Representative

08/26/05
101090/00309

M0464274.1

NOTE REGISTER

2.9 (C)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
LUBECK PUBLIC SERVICE DISTRICT
SEWERAGE SYSTEM BOND ANTICIPATION NOTE, SERIES 2005
(WEST VIRGINIA INFRASTRUCTURE FUND)

<u>Bond Number</u>	<u>Principal Amount</u>	<u>Date of Bond</u>
No. R-1	\$6,278,679	September 27, 2005

NO WRITING ON THIS BOND REGISTER EXCEPT BY THE REGISTRAR

Name of Registered Owner:

West Virginia Water Development Authority
180 Association Drive
Charleston, West Virginia 25311

Signature of Registrar:

United Bank, Inc.



Authorized Representative

08/26/05
101090/00309

M0464275.1

LUBECK PUBLIC SERVICE DISTRICT

SEWERAGE SYSTEM REVENUE BONDS, SERIES 1999 A

SEWERAGE SYSTEM REVENUE BONDS, SERIES 1999 B

SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 1999

BOND AND NOTE RESOLUTION

LUBECK PUBLIC SERVICE DISTRICT
SEWERAGE SYSTEM REVENUE BONDS,
SERIES 1999 A AND SERIES 1999 B, AND
SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 1999

INDEX

	<u>PAGE</u>
ARTICLE I	1
STATUTORY AUTHORITY, DEFINITIONS AND FINDINGS	1
Section 1.01. Authority of this Resolution	1
Section 1.02. Definitions	2
Section 1.03. Resolution Constitutes Contract	9
Section 1.04. Findings	10
ARTICLE II	12
AUTHORIZATION OF EXTENSIONS, ADDITIONS,	
BETTERMENTS AND IMPROVEMENTS TO SYSTEM	12
Section 2.01. Authorization of Extensions, Additions,	
Betterments and Improvements	12
Section 2.02. Authorization of Payment of Prior Obligations	12
ARTICLE III	13
AUTHORIZATION, TERMS, EXECUTION	
AND REGISTRATION OF BONDS	13
Section 3.01. Authorization and Terms of Original Bonds	13
Section 3.02. Execution of Bonds	14
Section 3.03. Authentication and Registration	14
Section 3.04. Negotiability, Transfer and Registration	14
Section 3.05. Bonds Mutilated, Destroyed, Stolen or Lost	15
Section 3.06. Bonds not to be Indebtedness of the Issuer	15
Section 3.07. Bonds Secured by Pledge of Net Revenues	15
Section 3.08. Form of Original Bonds	15
Section 3.09. Sale of Original Bonds; Ratification and	
Execution of Loan Agreements	33
Section 3.10. Certificate of Consulting Engineers	33
Section 3.11. Amended Schedule A Filing	33

ARTICLE IV	34
AUTHORIZATION, TERMS, EXECUTION AND REGISTRATION OF BOND ANTICIPATION NOTES	34
Section 4.01. Authorization and Terms of Notes	34
Section 4.02. Execution of Notes	34
Section 4.03. Authentication and Registration	35
Section 4.04. Negotiability, Transfer and Registration	35
Section 4.05. Notes Mutilated, Destroyed, Stolen or Lost	35
Section 4.06. Notes are Special Obligations	36
Section 4.07. Covenants of Resolution Applicable to Notes	36
Section 4.08. Form of Notes	36
Section 4.09. Application of Notes Proceeds	44
Section 4.10. Establishment of Series 1999 Bond Anticipation Notes Payment Fund.	44
Section 4.11. Conversion of Notes to Permanent Financing and/or Additional Bond Anticipation Notes	44
Section 4.12. Prohibition of Other Debt	46
Section 4.13. Investment of Funds	46
ARTICLE V	48
SYSTEM REVENUES AND APPLICATION THEREOF	48
Section 5.01. Establishment of Continuation of Funds and Accounts with Depository Bank	48
Section 5.02. Establishment of Funds and Accounts with Commission	48
Section 5.03. System Revenues; Flow of Funds	48
Section 5.04. Excess Bond and Note Proceeds	51
ARTICLE VI	52
APPLICATION OF ORIGINAL BOND AND NOTE PROCEEDS; FUNDS AND ACCOUNTS	52
Section 6.01. Application of Original Bond and Note Proceeds	52
Section 6.02. Disbursements From the Bond and Note Construction Trust Fund	52
ARTICLE VII	55
ADDITIONAL COVENANTS OF THE ISSUER	55
Section 7.01. General Covenants of the Issuer	55
Section 7.02. Bonds and Notes not to be Indebtedness of the Issuer	55
Section 7.03. Bonds Secured by Pledge of Net Revenues	55
Section 7.04. Rates	55
Section 7.05. Completion, Operation and Maintenance; Schedule of Cost	56
Section 7.06. Sale of the System	56
Section 7.07. Issuance of Other Obligations Payable out of Revenues and General Covenant Against Encumbrances	57

Section 7.08. Parity Bonds	58
Section 7.09. Insurance and Construction Bonds	59
Section 7.10. Consulting Engineers	60
Section 7.11. Compliance With Loan Agreements, Rules and Regulations ..	61
Section 7.12. No Free Services	61
Section 7.13. Enforcement of Collections	61
Section 7.14. No Competing Franchise	62
Section 7.15. Books, Records and Facilities	62
Section 7.16. Operating Budget	64
Section 7.17. Mandatory Connection	64
Section 7.18. Statutory Mortgage Lien	65
Section 7.19. PSC Order	65
Section 7.20. Covenant to Amend Resolution	65
Section 7.21. Compensation of the Issuer	65
Section 7.22. Securities Law Compliance	65
ARTICLE VIII	66
INVESTMENT OF FUNDS	66
Section 8.01. Investments	66
ARTICLE IX	67
DEFAULT AND REMEDIES	67
Section 9.01. Events of Default	67
Section 9.02. Remedies	67
Section 9.03. Appointment of Receiver	67
ARTICLE X	69
DEFEASANCE	69
Section 10.01. Defeasance of Bonds	69
ARTICLE XI	70
MISCELLANEOUS	70
Section 11.01. Modification or Amendment	70
Section 11.02. Severability of Invalid Provisions	70
Section 11.03. Table of Contents and Headings.	70
Section 11.04. Repeal of Conflicting Resolutions	70
Section 11.05. Covenant of Due Procedure	70
Section 11.06. Effective Date	71

Exhibit A - Project Description

BOND AND NOTE RESOLUTION

RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING SEWERAGE SYSTEM OF THE LUBECK PUBLIC SERVICE DISTRICT AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF, THROUGH THE ISSUANCE BY THE DISTRICT OF SEWERAGE SYSTEM REVENUE BONDS AND SEWERAGE SYSTEM BOND ANTICIPATION NOTES; AUTHORIZING THE ISSUANCE OF TWO SEPARATE SERIES OF SEWERAGE SYSTEM REVENUE BONDS OF THE DISTRICT IN AN AGGREGATE PRINCIPAL AMOUNT OF \$9,950,000 AND THE ISSUANCE OF ONE OR MORE SERIES OF SEWERAGE SYSTEM BOND ANTICIPATION NOTES OF THE DISTRICT IN AN AGGREGATE PRINCIPAL AMOUNT OF \$16,550,000, SUCH BONDS AND NOTES TO BE USED, ALONG WITH OTHER FUNDS AND MONEYS OF, OR AVAILABLE TO, THE DISTRICT WHICH MAY BE LAWFULLY EXPENDED FOR SUCH PURPOSES, TO FINANCE THE COST OF SUCH ACQUISITION AND CONSTRUCTION AND TO PAY OTHER COSTS IN CONNECTION THEREWITH; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE OWNERS OF SUCH BONDS AND NOTES; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS AND NOTES; APPROVING, RATIFYING AND CONFIRMING LOAN AGREEMENTS RELATING TO SUCH BONDS AND NOTES; AND ADOPTING OTHER PROVISIONS RELATED THERETO.

BE IT RESOLVED BY THE PUBLIC SERVICE BOARD OF LUBECK PUBLIC SERVICE DISTRICT:

ARTICLE I

STATUTORY AUTHORITY, DEFINITIONS AND FINDINGS

Section 1.01. Authority of this Resolution. This Resolution is enacted pursuant to the provisions of Chapter 16, Article 13A, Chapter 22C, Article 2 and Chapter

31, Article 15A of the Code of West Virginia, 1931, as amended, and other applicable provisions of law.

Section 1.02. Definitions. The following terms shall have the following meanings in this Resolution unless the context expressly requires otherwise.

"Act" shall mean collectively Chapter 16, Article 13A, Chapter 22C, Article 2 and Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended and in effect on the date of adoption of this Resolution.

"Authority" shall mean the West Virginia Water Development Authority, which is expected to be the original purchaser of the Original Bonds and the Notes on behalf of the Program and the Infrastructure Council, or any other agency of the State of West Virginia that succeeds to the function of the Authority.

"Board" means the public service board of the Issuer and shall include the membership of the board as may hereafter be duly constituted as the legal successors to the present membership or any other authority vested with and authorized to exercise the powers of the Issuer.

"Bond Act" means Chapter 16, Article 13A of the Code of West Virginia, 1931, as amended, and in effect on the date of the enactment of this Resolution.

"Bond Construction Trust Fund" shall mean the fund created by Section 6.01 hereof.

"Bond Registrar" shall mean the bank or other entity to be designated as such in the Supplemental Resolution and its successors and assigns for the purpose of authentication and registration of the Bonds.

"Bondholder" or "Owner of the Bonds" or "Registered Owners" or "Holder" or any similar term shall mean any person who shall be the registered owner of any Outstanding Bond or Bonds as hereinafter defined.

"Bonds" shall mean the Original Bonds and any pari passu additional Bonds hereafter issued within the terms, restrictions and conditions contained in this Resolution.

"Certificate of Authentication and Registration" means the certificate of authentication and registration on the Bonds in substantially the form set forth in Section 3.08 hereof, or, as appropriate, the certificate of authentication and registration on the Notes in substantially the form set forth in Section 4.05 hereof.

"Chairman" means the Chairman of the Board of the Issuer.

"Closing Date" shall mean the date upon which there is an exchange of the Bonds and Notes for all or a significant portion of the proceeds representing the purchase of the Bonds and Notes by the Authority.

"Code" shall mean the Internal Revenue Code of 1986, as amended, including the rules and regulations promulgated pursuant thereto or any predecessors or successors thereto.

"Commission" shall mean the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia which succeeds to the functions of the Commission.

"Completion Date" means the completion date of the Project, as defined in the SRF Regulations.

"Consulting Engineers" shall mean Burgess & Niple, Ltd., Consulting Engineers, Parkersburg, West Virginia, or any engineer or firm of engineers which shall at any time hereafter be retained by the Issuer as Consulting Engineers for the System.

"Cost of Project" or "Costs" shall mean those costs described in Section 1.04(F) hereof to be a part of the cost of the acquisition and construction of the Project.

"Debt Service" shall mean the scheduled amount of interest and amortization of principal payable on the Bonds during the period of computation, excluding amounts scheduled during such period which relate to principal which has been retired before the beginning of such period.

"DEP" shall mean West Virginia Division of Environmental Protection, a division of the West Virginia Bureau of Environment, or any other agency, board or department of the State that succeeds the function of the West Virginia Division of Environmental Protection.

"Depository Bank" shall mean a bank or national banking association located in the State, eligible under the laws of the State to receive deposits of state municipal funds and insured by the FDIC, and designated as such in the Supplemental Resolution, and its successors and assigns.

"Event of Default" means any event or occurrence specified in Section 9.01 hereof.

"FDIC" means the Federal Deposit Insurance Corporation and any successor to the functions thereof.

"Fiscal Year" shall mean each twelve month period beginning on July 1 and ending on the succeeding June 30.

"Fund" shall mean the "West Virginia Water Pollution Control Revolving Fund" established by the State, administered by the DEP and funded by capitalization grants awarded to the State pursuant to the federal Clean Water Act, as amended, for the purpose of establishing and maintaining a permanent perpetual fund for the construction, acquisition and improvement of wastewater treatment facilities.

"Government Obligations" means direct obligations of, or obligations the timely payment of the principal of and interest on which is guaranteed by, the United States of America, including (i) such obligations which have been stripped from their unmatured interest coupons, interest coupons stripped from such obligations and receipts or certificates evidencing payments from such obligations or interest coupons stripped from such obligations, (ii) evidences of ownership of a proportionate interest in specified direct obligations of, or specified obligations which are unconditionally and fully guaranteed by, the United States of America, which obligations are held by a bank or trust company organized and existing under the laws of the United States of America or any state thereof in the capacity of custodian and (iii) obligations, the sole source of the payment of the principal of and interest on which are obligations of the nature of those described in clause (i), which are irrevocably pledged for such purposes.

"Gross Revenues" shall mean the aggregate gross operating and non-operating revenues of the System determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts; provided, that "Gross Revenues" does not include any gains from the sale or other disposition of, or from any increase in the value of, capital assets (including Qualified Investments, as hereinafter defined) or any Tap Fees, as hereinafter defined, and for the furnishing by the Issuer of miscellaneous services.

"Independent Accountants" shall mean any certified public accountant or firm of certified public accountants which shall be retained by the Issuer as independent accountants for the System or for any other purpose except keeping the accounts of the System in the normal operation of its business and affairs.

"Infrastructure Council" means the West Virginia Infrastructure and Jobs Development Council or any successor thereto.

"Infrastructure Council Act" means Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended, and in effect on the date of the enactment of this Resolution.

"Issuer" or "District" means Lubeck Public Service District, a public corporation and political subdivision of the State.

"Loan Agreement" or "Loan Agreements" shall mean, as appropriate, (a) the Water Pollution Control Revolving Fund Loan Agreement by and among the Authority, the DEP and the Issuer providing for the purchase of the Series 1999 A Bonds from the Issuer

by the Authority; (b) the loan agreement to be entered into between the Authority and the Issuer providing for the purchase of the Series 1999 B Bonds from the Issuer by the Authority; and/or (c) the loan agreement to be entered into between the Authority and the Issuer providing for the purchase of the Series 1999 Bond Anticipation Notes from the Issuer by the Authority.

"Net Revenues" shall mean the balance of the Gross Revenues remaining after deduction of Operating Expenses, as hereafter defined.

"Notes" or "Series 1999 Notes" shall mean the \$16,550,000 in aggregate principal amount of the Issuer's Series 1999 Bond Anticipation Notes, to be issued for the purpose of paying a portion of the Costs of the acquisition and construction of the Project and for such other purposes permitted hereby and authorized by a resolution supplemental hereto.

"Notes Registrar" shall mean the bank or other entity to be designated as such in the Supplemental Resolution and its successors and assigns for the purpose of authentication and registration of the Notes.

"Operating Expenses" shall mean the reasonable, proper and necessary costs of repair, maintenance and operation of the System and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses (other than those capitalized as part of the Costs); fees and expenses of the Authority, DEP, the Infrastructure Council, fiscal agents, the Bond Registrar, the Notes Registrar and the Paying Agent (other than those capitalized as part of the Costs); payments to pension or retirement funds; taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that "Operating Expenses" does not include payments on account of the principal of or redemption premium, if any, or interest on the Bonds; charges for depreciation, losses from the sale or other disposition of, or from any decrease in the value of, capital assets; and amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

"Original Bonds" or "Bonds originally authorized hereby" or similar phrases shall mean the \$9,950,000 in aggregate principal amount of the Issuer's Sewerage System Revenue Bonds, Series 1999 A and Series 1999 B, to be issued for the purpose of paying a portion of the Costs of the acquisition and construction of the Project and for such other purposes permitted hereby and authorized by a resolution supplemental hereto.

"Outstanding" when used with reference to Bonds or Notes, as of any particular date, describes all such Bonds or Notes theretofore and thereupon having been authenticated and delivered except (i) any such Bond or Note canceled by the appropriate Registrar, at or prior to said date; (ii) any such Bond or Note for the payment of which moneys, equal to its principal amount, with interest to the date of maturity of any such Bond or Note, shall be in trust hereunder and set aside for such payment (whether upon or prior

to maturity); (iii) any such Bond or Note deemed to have been paid as provided in Article X hereof; and (iv) for purposes of consents or other action by a specified percentage of Bondholders or Noteholders, any such Bond or Note registered to the Issuer.

"Parity Bonds" shall mean additional Bonds issued under the provisions and within the limitations prescribed by Section 7.08 hereof, payable from Net Revenues on a parity with the Original Bonds.

"Paying Agent" shall mean the West Virginia Municipal Bond Commission or such other entity or authority as may be designated as a paying agent by the Issuer and the Supplemental Resolution with the written consent of the Authority and the DEP.

"Prior Obligations" shall mean the Issuer's 1992 Sewer Revenue Bonds in the approximate outstanding principal amount of \$75,193.43; the outstanding Step I Design Loan of the Parkersburg Sanitary Board in the approximate outstanding principal amount of \$10,544.41; and the Step II Design Loan of the Issuer in the approximate outstanding principal amount of \$178,981.65

"Program" shall mean the wastewater treatment facility acquisition, construction and improvement program coordinated through the capitalization grants program established under the Clean Water Act and administered by the DEP.

"Project" shall mean the acquisition and construction of certain extensions, additions, betterments and improvements to the System, a description of which is attached hereto as Exhibit A and incorporated herein by reference.

"PSC" means the Public Service Commission of West Virginia and any successor to the functions thereto.

"PSC Order" means the Recommended Decision of the PSC in Case No. 98-0009-W-CN, which was entered by an Administrative Law Judge of the PSC on July 31, 1998, and which became the Final Order of the PSC on August 11, 1998, granting the Issuer a Certificate of Convenience and Necessity to construct the Project and approving the financing thereof.

"Qualified Investments" shall mean and include any of the following:

- (a) Government Obligations;
- (b) Government Obligations which have been stripped of their unmatured interest coupons, interest coupons stripped from Government Obligations, and receipts or certificates evidencing payments from Government Obligations or interest coupons stripped from Government Obligations;

(c) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Government National Mortgage Association; the Tennessee Valley Authority; or the Washington Metropolitan Area Transit Authority;

(d) Any bond, debenture, note, participation certificate or other similar obligation issued by the Federal National Mortgage Association to the extent such obligation is guaranteed by the Government National Mortgage Association or issued by any other federal agency and backed by the full faith and credit of the United States of America;

(e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the Federal Deposit Insurance Corporation ("FDIC"), shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;

(f) Money market funds or similar funds whose only assets are investments of the type described in paragraphs (a) through (e) above;

(g) Repurchase agreements, fully secured by investments of the types described in paragraphs (a) through (e), above, with banks or national banking associations which are members of FDIC or with government bond dealers recognized as primary dealers by the Federal Reserve Bank of New York, provided, that said investments securing said repurchase agreements either must mature as nearly as practicable coincident with the maturity of said repurchase agreements or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said repurchase agreements, and provided further that the owner of such repurchase agreement shall have a prior perfected security interest in the collateral therefor; must have (or its agent must have) possession of such collateral; and such collateral must be free of all claims by third parties;

(h) The "consolidated fund" (or any distinct portion thereof) managed by the West Virginia Investment Management Board pursuant to Article 6, Chapter 12 of the Code of West Virginia, 1931, as amended; and

(i) Obligations of states or political subdivisions or agencies thereof, the interest on which is exempt from federal income taxation, and which are rated at least "A" by Moody's Investor Service, Inc., or Standard and Poor's Corporation.

"Registrar" shall mean, as appropriate, the Bond Registrar, the Notes Registrar or both.

"Regulations" shall mean the regulations promulgated under the Code.

"Renewal and Replacement Fund" shall mean the fund created by Section 5.01(2) hereof.

"Reserve Accounts" shall mean the Reserve Accounts created by Section 5.02(1)(a) hereof, and when preceded by a designated series of Bonds, shall mean the individual Reserve Account created for such series of Bonds.

"Reserve Requirement" shall mean, with respect to a designated series of Original Bonds and as of any date of calculation, the maximum amount of principal and interest, if any, which will become due on such series of the Bonds in the then current or any succeeding Fiscal Year.

"Resolution" means this resolution, as from time to time amended or supplemented.

"Revenue Fund" shall mean the fund created by or continued in Section 5.01(1) hereof.

"SRF Administrative Fee" shall mean any administrative fee required to be paid pursuant to the Loan Agreement.

"SRF Act" shall mean Chapter 22C, Article 2 of the Code of West Virginia, 1931, as amended, and in effect on the date of the enactment of this Resolution.

"SRF Loan Agreement" shall mean the Loan Agreement for the Series 1999 A Bonds.

"SRF Regulations" shall mean the regulations set forth in Title 47, Series 31 of the West Virginia Code of State Regulations.

"Secretary" means the Secretary of the Board of the Issuer.

"Series 1999 Bond Anticipation Notes Payment Fund" shall mean the fund established by Section 4.09 hereof and created in Section 5.02(3) hereof on account of the Notes.

"Series 1999 A Bonds" or "Series A Bonds" shall mean the \$7,950,000 in aggregate principal amount of Sewerage System Revenue Bonds, Series 1999 A, to be purchased by the Authority on behalf of the Fund.

"Series 1999 B Bonds" or "Series B Bonds" shall mean the \$2,000,000 in aggregate principal amount of Sewerage System Revenue Bonds, Series 1999 B, to be purchased by the Authority on behalf of the Infrastructure Council.

"Series 1999 Notes Loan Agreement" shall mean the loan agreement between the Authority and the Issuer with respect to the Series 1999 Notes.

"Sinking Funds" shall mean the Sinking Funds created by Section 5.02 hereof, and when preceded by a designated series of Bonds, shall mean the individual Sinking Fund created for such series of Bonds.

"State" shall mean the State of West Virginia.

"Supplemental Resolution" shall mean any resolution or order of the Issuer supplementing or amending this Resolution and, when preceded by the article "the," refers specifically to the supplemental resolutions authorizing the sale of the Original Bonds; provided, that any matter intended by this Resolution to be included in the Supplemental Resolution with respect to the Original Bonds and not so included may be included in another Supplemental Resolution.

"Surplus Revenues" shall mean the net revenues not required by this Resolution to be set aside and held for the payment of or security for the Bonds, including the reserve accounts and the Renewal and Replacement Fund.

"System" shall mean the existing wastewater collection and treatment system, both within and without said Issuer, and shall include any extensions, additions, betterments and improvements thereto.

Words importing singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations. Words importing the masculine gender include all other genders.

Additional terms and phrases are defined in this Resolution as they are used. Accounting terms not specifically defined herein shall be given meaning in accordance with general accepted accounting principles.

The terms "herein", "hereunder", "hereby", "hereto", "hereof" and any similar terms refer to this Resolution; and the term "hereafter" means after the date of the adoption of this Resolution.

Articles, sections and subsections mentioned by number only are the respective articles, sections and subsections of this Resolution so numbered.

Section 1.03. Resolution Constitutes Contract. In consideration of the acceptance of the Original Bonds and Notes and any other bonds or notes authorized to be

issued hereunder by those who shall own the same from time to time, this Resolution shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders and Noteholders, and the covenants and agreements herein set forth to be performed by said Issuer shall be for the equal benefit, protection and security of the legal owners of any and all of such Bonds and Notes, all of which shall be of equal rank and without preference, priority or distinction between any one Bond or Note and any other Bond or Note by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

Section 1.04. Findings. It is hereby found, determined and declared as follows:

A. The Issuer is a public corporation and political subdivision of the State in Wood County of said State. The Issuer now owns and operates a public wastewater collection and treatment system furnishing service to residences, premises and businesses residing or located within the territory of the Issuer. However, the Issuer has experienced numerous environmental problems in connection with the operation of the various package wastewater treatment plants within its territory, most of which are in poor condition and in need of repair. In addition, many residences within the service territory of the Issuer are served only by private septic systems, many of which are not working well. The deficiencies in the package plants and private septic systems described above are causing extreme environmental damage and serious health concerns.

B. It is deemed necessary and desirable for the health, welfare and safety of the inhabitants of the Issuer that there be acquired and constructed the Project, generally consisting of the acquisition and construction of approximately forty miles of sanitary sewer collection lines and appurtenances and a 1.5 million gallon per day wastewater treatment plant at an estimated cost of \$26,500,000, in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have been approved by DEP and are on file with the Issuer. The Project is generally described in Exhibit A attached hereto and incorporated by reference herein. The Project has an estimated useful life in excess of forty years.

C. The Issuer derives Net Revenues from the System. The Net Revenues are currently encumbered by two outstanding obligations. These obligations include the Issuer's 1992 Sewer Revenue Bonds in the approximate outstanding principal amount of \$75,193.43; the outstanding Step I Design Loan of the Parkersburg Sanitary Board in the approximate outstanding principal amount of \$10,544.41; and the Step II Design Loan of the Issuer in the approximate outstanding principal amount of \$178,981.65 (collectively, the "Prior Obligations"). The Issuer deems it advisable and hereby authorizes the payment in full of the outstanding principal and interest, if any, of the Prior Obligations from the proceeds of the Series 1999 B Bonds. Other than the Prior Obligations, the Net Revenues of the System are not encumbered in any manner.

D. The Issuer intends to permanently finance a portion of the costs of acquisition and construction of the Project and to pay in full the Prior Obligations through

the issuance of its revenue bonds to the Authority. The Issuer intends to temporarily finance a portion of the costs of acquisition and construction of the Project through the issuance of bond anticipation notes to the Authority.

E. The estimated revenues to be derived in each year after the enactment of this Resolution from the operation of the System will be sufficient to pay all the costs of the operation and maintenance of said System, the principal of and interest on each series of Original Bonds of the Issuer and all sinking fund and other payments provided for in this Resolution.

F. It is deemed necessary for the Issuer to issue its Original Bonds in the aggregate principal amount of \$9,950,000 to finance the costs of the acquisition and construction of the Project herein described through the Program and the Infrastructure Council and to finance the payment in full of the outstanding principal of and interest, if any, on the Prior Obligations. It is also deemed necessary for the Issuer to issue its Notes in the aggregate principal amount of not more than \$16,550,000 to temporarily finance a portion of the costs of acquisition and construction of the Project. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest on the Original Bonds prior to and during construction or acquisition and for six months after completion of construction of the Project, if any; engineering, fiscal and legal expenses; expenses for estimates of cost and revenue; expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise; administrative expense, any fees or expenses of the Authority, DEP and the Infrastructure Council, commitment fees, discount, initial fees for the service of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Original Bonds, and such other expenses as may be necessary or incidental to the financing herein authorized, the construction or acquisition of the Project and the placing of the same in operation, and the performance of the things herein required or permitted, in connection with any thereof; provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Original Bonds or the repayment of the indebtedness incurred by the Issuer for such purposes shall be deemed part of the Cost of the Project.

G. The Infrastructure Council has approved the Project and has authorized the Authority to purchase bonds of the Issuer to permanently finance a portion of the Costs of the Project and to issue bond anticipation notes of the Issuer to temporarily finance a portion of the Costs of the Project. It is in the best interests of the Issuer that its Series 1999 A Bonds, Series 1999 B Bonds and Series 1999 Bond Anticipation Notes be sold to the Authority pursuant to the terms and provisions of the respective Loan Agreements.

H. The Issuer has complied with all requirements of West Virginia law relating to authorization of the construction, acquisition and operation of the Project and issuance of the Original Bonds and Notes, or will have so complied prior to the issuance of any thereof, including, among other things, the obtaining of a Certificate of Convenience and Necessity from the PSC by Final Order, the time for rehearing and appeal of which has expired.

ARTICLE II

AUTHORIZATION OF EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO SYSTEM

Section 2.01. Authorization of Extensions, Additions, Betterments and Improvements. There is hereby authorized the acquisition and construction of the Project in accordance with plans and specifications prepared by the Consulting Engineers, approved by DEP, the Infrastructure Council and the Issuer, and on file in the office of the Board; provided, however, that such plans and specifications, and the construction and acquisition of the Project in accordance therewith, are subject to the specific authorization by the Board pursuant to a Supplemental Resolution.

Prior to issuing the Original Bonds for the acquisition and construction of the Project, the Issuer must receive acceptable bids or enter into contracts for the acquisition and construction of the Project, compatible with the financing plan submitted to the Program and the Infrastructure Council.

Section 2.02. Authorization of Payment of Prior Obligations. There is hereby authorized the payment in full of the Prior Obligations from the proceeds of the issuance of the Series 1999 B Bonds authorized hereunder.

[This space intentionally left blank]

ARTICLE III

AUTHORIZATION, TERMS, EXECUTION AND REGISTRATION OF BONDS

Section 3.01. Authorization and Terms of Original Bonds. For the purposes of funding the reserve accounts, paying costs of issuance, financing a portion of the costs of the acquisition and construction of the Project not otherwise provided for, paying in full the outstanding principal of and interest, if any, on the Prior Obligations, or any one or more of such items, there shall be issued the Original Bonds of the Issuer. The Original Bonds shall be issued in two series, with the first series to be designated "Sewerage System Revenue Bonds, Series 1999 A" and so on, in an aggregate principal amount of \$9,950,000. Each series of Original Bonds shall be dated as of the date of delivery thereof, shall bear such interest, shall mature at such times, not exceeding forty (40) years after the date of issuance, and in such amount or amounts as shall be set out in the respective Loan Agreements. The Original Bonds shall bear no interest. The Series 1999 A Bonds shall be subject to the SRF Administrative Fee. The repayment of principal on the Original Bonds shall be as set forth on Schedule Y to the respective Loan Agreements. The Original Bonds shall contain such other terms, provisions, conditions and limitations, all as provided by this Resolution and the Loan Agreements and as the Board shall prescribe by a supplemental or amendatory resolution hereto adopted in connection with the sale of such Original Bonds.

The Original Bonds shall be payable as to principal, at the principal office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America.

Unless otherwise provided in the Supplemental Resolution, the Original Bonds shall be issued in the form of a single bond for each series, fully registered to the Authority, with a record of advances and a payment record attached, representing the aggregate principal amount, and shall mature in principal installments, all as provided in the Loan Agreements and said Supplemental Resolution. Bonds shall be exchangeable at the option and expense of the Bondholder for other fully registered Bonds in aggregate principal amount equal to the amount of said Bonds then Outstanding, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bonds may be issued in fully registered form, in the denomination of \$5,000 or any integral multiple thereof, all as determined by a Supplemental Resolution. Said Bonds shall be dated as of the date specified in said Supplemental Resolution.

Section 3.02. Execution of Bonds. Said Bonds shall be executed in the name of the Issuer by the Chairman and attested by the Secretary, and the seal of the Issuer shall be affixed thereto or imprinted thereon. In case any one or more of the officers who shall have signed or sealed any of the Bonds shall cease to be such officer of the Issuer before the Bonds so signed and sealed have been sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Bonds may be signed and sealed on behalf of the Issuer by such person as, at the actual time of the execution of such Bonds, shall hold the proper office in the Issuer, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.03. Authentication and Registration. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Resolution unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Section 3.08, shall have been duly manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Resolution. The Certificate of Authentication and Registration on any Bond shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.04. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Bonds shall be, and have all of the qualities and incidents of, negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive owner, in accepting any of said Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive owner shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value in the manner provided hereinafter in the form of said Bonds.

So long as any of the Bonds remain Outstanding, the Issuer, through the Bond Registrar, shall keep and maintain books for the registration and transfer of the Bonds.

Bonds shall be transferable only upon the books of the Bond Registrar, by the registered Owner thereof in person or by the Owner's attorney duly authorized in writing, upon surrender thereto together with a written instrument of transfer satisfactory to the Bond Registrar, duly executed by the registered Owner or the Owner's duly authorized attorney.

In all cases in which the privilege of exchanging Bonds or transferring Bonds is exercised, Bonds shall be delivered in accordance with the provisions of this Resolution. All Bonds surrendered in any such exchanges or transfers shall forthwith be canceled by the Bond Registrar. For every such exchange or transfer of Bonds, the Bond Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge

required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Bond Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer. The Bond Registrar shall not be obliged to make any such exchange or transfer of Bonds during the 15 days preceding an interest payment date on the Bonds, or, in the case of any proposed redemption of Bonds, next preceding the date of the selection of Bonds to be redeemed.

Section 3.05. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue and deliver a new Bond in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Owner's furnishing the Issuer proof of ownership thereof and satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer may incur and the Bond Registrar shall authenticate the new Bond. All Bonds so surrendered shall be canceled by the Bond Registrar and held for the account of the Issuer. If such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and, if such Bond be lost, stolen, or destroyed, without surrender therefor.

Any such duplicate Bonds issued pursuant to this Section shall constitute original, additional contractual obligations on the part of the Issuer, whether or not the lost, stolen or destroyed Bonds be at any time found by anyone, and such duplicate Bonds shall be entitled to equal and proportionate benefits and rights as to lien and source of security for payment from the revenues pledged herein with all other Bonds issued hereunder.

Section 3.06. Bonds not to be Indebtedness of the Issuer. The Bonds shall not, in any event, be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided. No Owner or Owners of any of the Bonds shall ever have the right to compel the exercise of the taxing power, if any, of the Issuer to pay the Bonds or any interest thereon.

Section 3.07. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of all the Original Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Net Revenues derived from the System. Such Net Revenues in an amount sufficient to pay the principal of and interest, if any, on and other payments for the Bonds and to make the payments into the sinking funds and the reserve accounts therein and in the Renewal and Replacement Fund hereinafter established are hereby irrevocably pledged to the payment of the principal of and any interest on the Bonds as the same become due.

Section 3.08. Form of Original Bonds. The text of each series of Original Bonds shall be of substantially the following tenor, with such omissions, insertions and

variations as may be necessary and desirable and authorized or permitted by this Resolution or any subsequent resolution adopted prior to the issuance thereof.

[This space intentionally left blank]

[FORM OF THE SERIES 1999 A BOND]

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
COUNTY OF WOOD
LUBECK PUBLIC SERVICE DISTRICT
SEWERAGE SYSTEM
REVENUE BONDS, SERIES 1999 A
(WEST VIRGINIA SRF PROGRAM)

No. AR-1

\$ _____

KNOW ALL MEN BY THESE PRESENTS: That LUBECK PUBLIC SERVICE DISTRICT, a public corporation and political subdivision organized and existing under the laws of the State of West Virginia, in Wood County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority"), or registered assigns, the sum of _____ (\$ _____), or such lesser amount as is set forth on the Record of Advances attached hereto as Exhibit A and incorporated herein by reference, in quarterly installments on the 1st day of March, the 1st day of June, the 1st day of September and the 1st day of December in each year beginning ____, 200., as set forth on the "Schedule of Debt Service" attached as Exhibit A hereto and incorporated herein by reference, with interest on each installment at the rate per annum set forth on said Exhibit A. The SRF Administrative Fee (as defined in the hereinafter described Bond Resolution) shall also be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing _____ 1, 200., as set forth on Exhibit B attached hereto.

This Bond shall bear no interest. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of principal, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the Paying Agent.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and as otherwise provided by the Loan Agreement dated December 29, 1998, among the Authority, the DEP and the Issuer.

This Bond is issued to permanently finance a portion of the costs of the acquisition and construction of certain extensions, additions, betterments and improvements to the existing system of the Issuer (the "Project," and together with any further extensions, additions, betterments and improvements thereto, the "System") and to pay certain costs of issuance hereof and related costs. This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13A of the West Virginia Code of 1931, as amended (the

"Act"), a Resolution duly enacted by the Issuer on the ____ day of _____, 1999, and a Supplemental Resolution adopted by the Issuer on the ____ day of _____, 1999 (collectively, the "Resolution"), and is subject to all the terms and conditions thereof. The Resolution provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Resolution.

THIS BOND RANKS EQUALLY AS TO LIEN AND SECURITY WITH THE ISSUER'S SEWERAGE SYSTEM REVENUE BONDS, SERIES 1999 B (THE "PARITY BONDS").

This Bond is payable only from and secured by a pledge of a first lien on the Net Revenues, on a parity with the lien of the Parity Bonds, to be derived from the operation of the System, moneys in the Series 1999 A Reserve Account created under the Resolution and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest thereon except from said special fund provided from the Net Revenues, the moneys in the Reserve Account and unexpended Bond proceeds. Pursuant to the Resolution, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the amount required to pay the maximum amount due in any ensuing fiscal year of principal of and interest on all obligations on a parity with the Bonds, payable from such revenues, provided however, that so long as there exists in the Series 1999 A Reserve Account an amount equal to the maximum amount of principal and interest which will become due on the Bonds and any bonds on a parity therewith in any succeeding fiscal year, respectively, an amount equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds, for the terms of which, reference is made to the Resolution. Remedies provided the registered owners of the Bonds are exclusively as provided in the Resolution, to which reference is here made for a detailed description thereof.

This Bond is transferable, as provided in the Resolution, only upon the books of _____, _____, West Virginia, (the "Registrar"), kept for that purpose at the office of the Registrar, by the registered owner or its attorney duly authorized in writing, upon the surrender of this Bond together, with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

This Bond, under the provision of the Act is, and has provided all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law, shall be applied solely to the payment of the Costs of the Project described in the Resolution or to the appurtenant sinking fund, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the owner of this Bond.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest on this Bond.

All provisions of the Resolution and the statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond, to the same extent as if written fully herein.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, LUBECK PUBLIC SERVICE DISTRICT has caused this Bond to be signed by its Chairman and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Secretary, and has caused this Bond to be dated the ____ day of _____, 1999.

[SEAL]

Chairman

ATTEST:

Secretary

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Original Bonds described in the within-mentioned Resolution and has been duly registered in the name of the registered owner set forth above.

_____,

By _____
Its Authorized Officer

Dated: _____

EXHIBIT A
RECORD OF ADVANCES

<u>Amount</u>		<u>Date</u>		<u>Amount</u>		<u>Date</u>	
(1)	\$			(7)	\$		
(2)	\$			(8)	\$		
(3)	\$			(9)	\$		
(4)	\$			(10)	\$		
(5)	\$			(11)	\$		
(6)	\$			(12)	\$		
				Total \$ _____			

EXHIBIT B

SCHEDULE OF ANNUAL DEBT SERVICE

[Form of Assignment]

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto

the within Bond and does hereby irrevocably constitute and appoint _____,
Attorney to transfer the said Bond on the books kept for registration of the within Bond of
the said Issuer, with full power of substitution in the premises.

Dated: _____, ____.

In the presence of:

[FORM OF THE SERIES 1999 B BOND]

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
COUNTY OF WOOD
LUBECK PUBLIC SERVICE DISTRICT
SEWERAGE SYSTEM
REVENUE BONDS, SERIES 1999 B
(WEST VIRGINIA INFRASTRUCTURE FUND)

No. BR-1

\$ _____

KNOW ALL MEN BY THESE PRESENTS: That LUBECK PUBLIC SERVICE DISTRICT, a public corporation and political subdivision organized and existing under the laws of the State of West Virginia, in Wood County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Infrastructure and Jobs Development Council, or registered assigns, the sum of _____ (\$ _____), or such lesser amount as is set forth on the Record of Advances attached hereto as Exhibit A and incorporated herein by reference, in quarterly installments on the 1st day of March, the 1st day of June, the 1st day of September and the 1st day of December in each year beginning ____, 200_, as set forth on the "Schedule of Debt Service" attached as Exhibit B hereto and incorporated herein by reference, with interest on each installment at the rate per annum set forth on said Exhibit B.

This bond shall bear no interest. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of principal, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the Paying Agent.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and as otherwise provided by the Loan Agreement dated ____, 1999, between the Authority and the Issuer.

This Bond is issued to permanently finance a portion of the costs of the acquisition and construction of certain extensions, additions, betterments and improvements to the existing system of the Issuer (the "Project," and together with any further extensions, additions, betterments and improvements thereto, the "System"), to pay in full the outstanding principal of and interest, if any, on the Prior Obligations (as defined in the hereinafter defined Resolution) and to pay certain costs of issuance hereof and related costs. This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13A of the

West Virginia Code of 1931, as amended (the "Act"), a Resolution duly enacted by the Issuer on the ____ day of _____, 1999, and a Supplemental Resolution adopted by the Issuer on the ____ day of _____, 1999 (collectively called the "Resolution"), and is subject to all the terms and conditions thereof. The Resolution provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Resolution.

THIS BOND RANKS EQUALLY AS TO LIEN AND SECURITY WITH THE ISSUER'S SEWERAGE SYSTEM REVENUE BONDS, SERIES 1999 A (THE "PARITY BONDS").

This Bond is payable only from and secured by a pledge of a first lien on the Net Revenues, on a parity with the lien of the Parity Bonds, to be derived from the operation of the System, moneys in the Series 1999 B Reserve Account created under the Resolution and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest thereon except from said special fund provided from the Net Revenues, the moneys in the Reserve Account and unexpended Bond proceeds. Pursuant to the Resolution, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the amount required to pay the maximum amount due in any ensuing fiscal year of principal of and interest on all obligations on a parity with the Bonds, payable from such revenues, provided however, that so long as there exists in the Series 1999 B Reserve Account an amount equal to the maximum amount of principal and interest which will become due on the Bonds and any bonds on a parity therewith in any succeeding fiscal year, respectively, an amount equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds, for the terms of which, reference is made to the Resolution. Remedies provided the registered owners of the Bonds are exclusively as provided in the Resolution, to which reference is here made for a detailed description thereof.

This Bond is transferable, as provided in the Resolution, only upon the books of _____, _____, West Virginia, (the "Registrar"), kept for that purpose at the office of the Registrar, by the registered owner or its attorney duly authorized in writing, upon the surrender of this Bond together, with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

This Bond, under the provision of the Act is, and has provided all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law, shall be applied solely to the payment of the Costs of the Project described in the Resolution or to the appurtenant sinking fund, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the owner of this Bond.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest on this Bond.

All provisions of the Resolution and the statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond, to the same extent as if written fully herein.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, LUBECK PUBLIC SERVICE DISTRICT has caused this Bond to be signed by its Chairman and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Secretary, and has caused this Bond to be dated the ____ day of _____, 1999.

[SEAL]

Chairman

ATTEST:

Secretary

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Original Bonds described in the within-mentioned Resolution and has been duly registered in the name of the registered owner set forth above.

_____,

By _____
Its Authorized Officer

Dated: _____

EXHIBIT A
RECORD OF ADVANCES

<u>Amount</u>		<u>Date</u>		<u>Amount</u>		<u>Date</u>	
(1)	\$			(7)	\$		
(2)	\$			(8)	\$		
(3)	\$			(9)	\$		
(4)	\$			(10)	\$		
(5)	\$			(11)	\$		
(6)	\$			(12)	\$		
				Total \$ _____			

EXHIBIT B

SCHEDULE OF ANNUAL DEBT SERVICE

[Form of Assignment]

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto

the within Bond and does hereby irrevocably constitute and appoint _____,
Attorney to transfer the said Bond on the books kept for registration of the within Bond of
the said Issuer, with full power of substitution in the premises.

Dated: _____, ____.

In the presence of:

Section 3.09. Sale of Original Bonds; Ratification and Execution of Loan Agreements. The Original Bonds shall be sold to the Authority, pursuant to the terms and conditions of the respective Loan Agreements. As a ratification of the resolution or resolutions of the Board authorizing execution of the Loan Agreements, the Chairman is specifically authorized and directed to execute the Loan Agreements and the Secretary is directed to affix the seal of the Issuer, attest the same and deliver the Loan Agreements to the Authority. The Loan Agreements are specifically incorporated into this Resolution.

Section 3.10. Certificate of Consulting Engineers. Prior to the issuance of the Original Bonds, the Issuer must obtain the certificate of the Consulting Engineers, in the form attached to the SRF Loan Agreement, to the effect that the Project has been designed as provided in the Program application and will be constructed in accordance with the approved plans, specifications and design as submitted to the DEP and the Authority, as the case may be, that the Project will be adequate for the purposes for which it was designed, and the funding plan as submitted to the DEP and the Authority is sufficient to pay the costs of the acquisition and construction of the Project. Prior to the issuance of the Original Bonds, the Issuer will provide to the Infrastructure Council such certificates of the Consulting Engineers as the Infrastructure Council shall require.

Section 3.11. Amended Schedule A Filing. Within 60 days following the Completion Date, the Issuer will file with the Authority its schedule, in substantially the form of "Amended Schedule A" to the SRF Loan Agreement, setting forth the actual costs of the Project and sources of funds used therefor.

[This space intentionally left blank]

ARTICLE IV

AUTHORIZATION, TERMS, EXECUTION AND REGISTRATION OF BOND ANTICIPATION NOTES

Section 4.01. Authorization and Terms of Notes. In order to pay certain Costs of the Project pending receipt of proceeds from the issuance of additional sewerage system revenue bonds for the System or proceeds of additional grants (other than Infrastructure Council grants) received for the System, there shall be issued the Notes of the Issuer. The Notes shall be issued in one series, designated "Bond Anticipation Notes, Series 1999," in the aggregate principal amount of \$16,550,000, and numbered R-1. The Notes shall be dated as of the date of delivery thereof, shall mature at such time and in such amount or amounts as shall be set forth in the Series 1999 Notes Loan Agreement and the Supplemental Resolution. The Notes shall bear no interest. The repayment of principal on the Notes shall be as set forth on Schedule Y to the Series 1999 Notes Loan Agreement and the Supplemental Resolution. The Notes shall contain such other terms, provisions, conditions and limitations, all as provided by this Resolution and the Series 1999 Notes Loan Agreement and as the Board may prescribe by a supplementary or amendatory resolution hereto in connection with the sale of the Notes.

The Notes shall be payable as to principal at the principal office of the Paying Agent, in any coin or currency which, on the date of payment of principal is legal tender for the payment of public and private debts under the laws of the United States of America.

Unless otherwise provided in the Supplemental Resolution, the Notes shall be issued in the form of a single note, fully registered to the Authority, with a record of advances attached, all as provided in the Series 1999 Note Loan Agreement and said Supplemental Resolution. The Notes shall be exchangeable at the option and expense of the Bondholder for other fully registered Notes in aggregate principal amount equal to the amount of said Notes then Outstanding, with a maturity corresponding to the dates of maturity of the Notes; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Section 4.02. Execution of Notes. The Notes shall be executed in the name of the Issuer by the Chairman and attested by the Secretary, and the seal of the Issuer shall be affixed thereto or imprinted thereon. In case any one or more of the officers who shall have signed or sealed the Notes shall cease to be such officer of the Issuer before the Notes so signed and sealed have been sold and delivered, such Notes may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Notes had not ceased to hold such office. The Notes may be signed and sealed on behalf of the Issuer by such person as, at the actual time of the execution of the Notes, shall hold the proper office in the Issuer, although at the date of the Notes such person may not have held such office or may not have been so authorized.

Section 4.03. Authentication and Registration. No Note shall be valid or obligatory for any purpose or entitled to any security or benefit under this Resolution unless and until the Certificate of Authentication and Registration on such Note, substantially in the form set forth in Section 4.08, shall have been duly manually executed by the Notes Registrar. Any such executed Certificate of Authentication and Registration upon any such Note shall be conclusive evidence that such Note has been authenticated, registered and delivered under this Resolution. The Certificate of Authentication and Registration on any Bond shall be deemed to have been executed by the Notes Registrar if manually signed by an authorized officer of the Notes Registrar.

Section 4.04. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Notes shall be, and have all of the qualities and incidents of, negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive owner, in accepting any of said Notes shall be conclusively deemed to have agreed that such Notes shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive owner shall further be conclusively deemed to have agreed that said Notes shall be incontestable in the hands of a bona fide holder for value in the manner provided hereinafter in the form of said Notes.

So long as the Notes remain Outstanding, the Issuer, through the Notes Registrar, shall keep and maintain books for the registration and transfer of the Notes.

The Notes shall be transferable only upon the books of the Notes Registrar, by the registered Owner thereof in person or by the Owner's attorney duly authorized in writing, upon surrender thereto together with a written instrument of transfer satisfactory to the Notes Registrar, duly executed by the registered Owner or the Owner's duly authorized attorney.

In all cases in which the privilege of exchanging the Notes or transferring the Notes is exercised, the Notes shall be delivered in accordance with the provisions of this Resolution. All Notes surrendered in any such exchanges or transfers shall forthwith be canceled by the Notes Registrar. For every such exchange or transfer of Bonds, the Notes Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Note upon each exchange or transfer, and any other expenses of the Notes Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer.

Section 4.05. Notes Mutilated, Destroyed, Stolen or Lost. In case any Note shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue and deliver a new Note in exchange and substitution for such mutilated Note, upon surrender and cancellation of such mutilated Note, or in lieu of and substitution for the Note destroyed, stolen or lost, and upon the Owner's furnishing the Issuer proof of ownership thereof and satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer may incur and the Notes Registrar shall authenticate the new Note. All Notes so surrendered shall be

canceled by the Notes Registrar and held for the account of the Issuer. If such Note shall have matured or be about to mature, instead of issuing a substitute Note, the Issuer may pay the same, upon being indemnified as aforesaid, and, if such Note be lost, stolen, or destroyed, without surrender therefor.

Any such duplicate Notes issued pursuant to this Section shall constitute original, additional contractual obligations on the part of the Issuer, whether or not the lost, stolen or destroyed Notes be at any time found by anyone, and such duplicate Notes shall be entitled to equal and proportionate benefits and rights as to lien and source of security for payment Notes with any other Notes issued hereunder.

Section 4.06. Notes are Special Obligations. The Notes shall be special obligations of the Issuer payable as to principal and interest, if any, solely from proceeds of any additional sewerage system revenue bonds or refunding revenue bonds of the Issuer which may be issued for the Project, any additional grants (other than Infrastructure Council grants) which the Issuer may receive for the Project and any additional bond anticipation notes which the Issuer may issue from time to time upon maturity of the Notes. If, on the fortieth anniversary of the date of issuance of the Notes, the Issuer has not (i) issued any additional sewerage system revenue bonds, refunding revenue bonds, or bond anticipation notes pursuant to the terms of this Resolution or (ii) received any additional grants (other than Infrastructure Council grants) for the Project, then the Infrastructure Council shall instruct the Authority to convert the outstanding principal amount of the Note or Notes then Outstanding to a grant and to cancel the Note or Notes then Outstanding; provided, that in no event shall an amount of the principal amount of the Notes greater than \$8,600,000 be converted to a grant.

The Notes do not and shall not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions. The general funds of the Issuer are not liable, and neither the full faith and credit nor the taxing power, if any, of the Issuer is pledged for the payment of the Notes. The Holder of the Notes shall never have the right to compel the forfeiture of any property of the Issuer. The Notes shall not be a debt of the Issuer, nor a legal or equitable pledge, charge, lien or encumbrance upon any property of the Issuer or upon any of its income, receipts or revenues except as may be set forth in the Supplemental Resolution.

Section 4.07. Covenants of Resolution Applicable to Notes. All covenants and restrictions contained in the Resolution, where appropriate and to the extent required by the Infrastructure Council, the Authority or the Series 1999 Notes Loan Agreement, are recognized and agreed by the Issuer to be applicable to the Notes.

Section 4.08. Form of Notes. The text of the Notes shall be of substantially the following tenor, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted by this Resolution or any subsequent resolution adopted prior to the issuance thereof.

[FORM OF THE BOND ANTICIPATION NOTE, SERIES 1999]

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
COUNTY OF WOOD
LUBECK PUBLIC SERVICE DISTRICT
SEWERAGE SYSTEM
BOND ANTICIPATION NOTE, SERIES 1999
(WEST VIRGINIA INFRASTRUCTURE FUND)

No. R-1

\$ _____

KNOW ALL MEN BY THESE PRESENTS: That LUBECK PUBLIC SERVICE DISTRICT, a public corporation and political subdivision organized and existing under the laws of the State of West Virginia, in Wood County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority") on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Infrastructure Council"), or registered assigns, the principal sum of _____ (\$ _____), or such lesser amount as shall have been advanced hereunder and not previously repaid, as set forth on the Record of Advances attached hereto as Exhibit A and incorporated herein by reference, in annual installments of One Hundred Dollars (\$100) on the 1st day of _____ of each year beginning _____, 200_, with the entire outstanding principal sum payable in full on the ____ day of _____, 200_. Notwithstanding the foregoing, if the Program (as defined in the hereinafter-defined Resolution) is amended prior to the maturity date of the Notes to permit the Authority and the DEP to authorize and make loans under the Program for terms in excess of twenty years, the Authority, acting on behalf of the Infrastructure Council and upon providing reasonable written notice to the Issuer, may declare all or any portion of the outstanding principal amount of the Notes to be due and payable prior to maturity.

This Note shall bear no interest. The principal of this Note is payable in any coin or currency which on the date of payment thereof is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the Paying Agent.

This Note may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and under the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement dated ____, 1999, between the Issuer and the Authority, on behalf of the Infrastructure Council.

This Note is issued to temporarily finance a portion of the costs of the acquisition and construction of certain extensions, additions, betterments and improvements to the existing system of the Issuer (the "Project," and together with any further extensions, additions, betterments and improvements thereto, the "System") and to pay certain costs of issuance hereof and related costs. This Note is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13A of the West Virginia Code of 1931, as amended (the "Act"), a Resolution duly enacted by the Issuer on the ____ day of _____, 1999, and a Supplemental Resolution adopted by the Issuer on the ____ day of _____, 1999 (collectively called the "Resolution"), and is subject to all the terms and conditions thereof.

This Note is payable solely from proceeds of any additional sewerage system revenue bonds or refunding revenue bonds of the Issuer which may be issued for the Project, any additional grants (other than Infrastructure Council grants) which the Issuer may receive for the Project and any additional bond anticipation notes which the Issuer may issue upon maturity of the Note. Money from these sources shall be deposited in the Series 1999 Notes Payment Fund established under the Resolution for the prompt payment of the principal of this Note. If, on the fortieth anniversary of the date of issuance of the Notes, the Issuer has not (i) issued any additional sewerage system revenue bonds, refunding revenue bonds, or bond anticipation notes pursuant to the terms of the Resolution or (ii) received any additional grants (other than Infrastructure Council grants) for the Project, then the Infrastructure Council shall instruct the Authority to convert the outstanding principal amount of the Note or Notes then Outstanding to a grant and to cancel the Note or Notes then Outstanding; provided, that in no event shall an amount of the principal amount of the Notes greater than \$8,600,000 be converted to a grant.

This Note does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest thereon except from the sources set forth above. Pursuant to the Resolution, the Issuer has entered into certain covenants with the Authority, acting on behalf of the Infrastructure Council, for the terms of which reference is made to the Resolution.

This Note is transferable, as provided in the Resolution, only upon the books of _____, _____, West Virginia, (the "Registrar"), kept for that purpose at the office of the Registrar, by the registered owner or its attorney duly authorized in writing, upon the surrender of this Note together, with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

This Note, under the provision of the Act is, and has provided all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Note, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law, shall be applied solely to the payment of the Costs of the Project described in the Resolution, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the owner of this Note.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Note have existed, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Note, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia.

All provisions of the Resolution and the statutes under which this Note is issued shall be deemed to be a part of the contract evidenced by this Note, to the same extent as if written fully herein.

[This space intentionally left blank]

IN WITNESS WHEREOF, LUBECK PUBLIC SERVICE DISTRICT has caused this Note to be signed by its Chairman and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Secretary, and has caused this Note to be dated the ____ day of _____, 1999.

[SEAL]

Chairman

ATTEST:

Secretary

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Note is one of the Notes described in the within-mentioned Resolution and has been duly registered in the name of the registered owner set forth above.

_____,

By _____
Its Authorized Officer

Dated: _____

EXHIBIT A

RECORD OF ADVANCES

<u>Amount</u>	<u>Date</u>	<u>Amount</u>	<u>Date</u>
(1) \$		(7) \$	
(2) \$		(8) \$	
(3) \$		(9) \$	
(4) \$		(10) \$	
(5) \$		(11) \$	
(6) \$		(12) \$	
		Total \$ _____	

[Form of Assignment]

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto

the within Note and does hereby irrevocably constitute and appoint _____,
Attorney to transfer the said Note on the books kept for registration of the within Note of the
said Issuer, with full power of substitution in the premises.

Dated: _____, ____.

In the presence of:

Section 4.09. Application of Notes Proceeds. The moneys derived from the sale of the Notes shall be deposited with the Depository Bank in the Series 1999 Bond and Note Construction Trust Fund and applied solely to the payment of the costs of the Project and the costs of issuance and related costs.

Section 4.10. Establishment of Series 1999 Bond Anticipation Notes Payment Fund. There is hereby created and established with the Commission, to be held by the Commission separate and apart from all other funds or accounts of the Commission and from all other funds or accounts of the Issuer, the Series 1999 Bond Anticipation Notes Payment Fund. Upon receipt of proceeds of any grants (other than an Infrastructure Council grants) for the System, any sewerage system revenue bonds or revenue refunding bonds of the Issuer, or any additional bond anticipation notes which the Issuer may issue upon maturity of the Notes pursuant to Section 4.11 hereof, an amount of the proceeds of such grants, revenue bonds or additional bond anticipation notes sufficient to pay all or a portion of the entire outstanding principal of the Notes shall be deposited in the Series 1999 Bond Anticipation Notes Payment Fund. All moneys so deposited in the Series 1999 Bond Anticipation Notes Payment Fund shall be paid by the Commission to the Authority on the maturity date of the Notes, if such moneys have been so deposited prior to the maturity date of the Notes, or on an earlier date if so requested by the Authority on behalf of the Infrastructure Council and if so directed by the Issuer, in full or partial payment of the outstanding principal of the Notes. All moneys deposited in the Series 1999 Bond Anticipation Notes Payment Fund shall be held in trust for the Authority on behalf of the Infrastructure Council, and the Issuer shall have no rights with respect thereto except to receive the balance therein after payment of the Notes in full and the charges, if any, of the Paying Agent.

Any moneys remaining in the Series 1999 Bond Anticipation Notes Payment Fund, after the payment of the Notes in full and all charges of the Paying Agent, shall be used as directed in writing by the Authority and the Infrastructure Council.

Section 4.11. Conversion of Notes to Permanent Financing and/or Additional Bond Anticipation Notes.

A. In the event proceeds of any grants (other than Infrastructure Council grants) for the Project, any sewerage system revenue bonds or revenue refunding bonds of the Issuer or any other obligations of the Issuer issued subsequent to the issuance of the Notes are not sufficient or available on a timely basis to pay the Notes in full by the maturity date of the Notes, the Issuer covenants and agrees to issue and sell its revenue bonds and/or additional bond anticipation notes in an amount sufficient to pay the Notes in full pursuant to the requirements of this Section 4.11.

B. The Issuer covenants that no later than twelve months prior to the maturity date of the Notes, the Issuer will retain an Independent Certified Public Accountant to prepare a report (the "Customer Growth Report") setting forth the following information:

(i) the amount of additional Net Revenues of the System attributable to the annual customer growth experienced by the System during the period between the date of issuance of the Notes and the date of the report, taking into account any rebates required to be repaid to new customers for construction advances pursuant to applicable PSC regulations;

(ii) the existing maximum annual debt service requirements of all bonds, notes, and other obligations then Outstanding payable from the Net Revenues of the System, taking into account the periodic payments required to be made into the various sinking fund, reserve account, renewal and replacement fund payments required by this Resolution on account of the Bonds and by any other resolution authorizing the issuance of such bonds, notes and other obligations;

(iii) the increases in operation and maintenance expenses experienced by the System during the period between the date of issuance of the Notes and the date of the report, and the additional increases in operation and maintenance expenses that are expected to be experienced by the System as a result of future customer growth, the effects of inflation, or otherwise;

(iv) the rate coverage requirements established by Section 7.04 of this Resolution and any more stringent rate coverage requirements established in any resolution adopted after this Resolution authorizing the issuance of other bonds, notes or other obligations of the Issuer then Outstanding;

(v) the then-current rates and charges of the Issuer;

(vi) the sources of permanent financing potentially available to the Issuer during the succeeding six months, including, for each such source, the applicable principal amount available to be loaned to the Issuer, the applicable interest rate, the existence and amount of any administrative or similar fee to be imposed by the lender, and the term of the loan; and

(vii) whether, considering the factors stated in subdivisions (ii), (iii), (iv) and (v) above and the terms of the available sources of permanent financing stated in subdivision (vi) above, the additional Net Revenues of the System attributable to the annual customer growth experienced by the System stated in subdivision (i) are sufficient to permit the Issuer to issue additional revenue bonds payable from the Net Revenues of the System to repay all or a portion of the Outstanding principal amount of the Notes and, if so, the principal amount of such additional revenue bonds that could be so issued.

No later than twelve months prior to the maturity date of the Notes, the Issuer will contact all available governmental funding sources to secure the information required to be set forth in subdivision (vi) above.

C. The Issuer will provide the Customer Growth Report to the Authority and the Infrastructure Council no later than ten and one-half months prior to the maturity date of the Notes. Based on its review of the Customer Growth Report, the Infrastructure Council will recommend that the Issuer take one or both of the following actions:

(i) that the Issuer issue additional revenue bonds, notes or other obligations of the System and that the proceeds of such additional revenue bonds, notes or other obligations be deposited in the Series 1999 Bond Anticipation Notes Payment Fund prior to the maturity date of the Notes to be applied to the payment of all or a portion of the Outstanding principal amount of the Notes; or

(ii) to the extent that the proceeds of such additional revenue bonds, notes or other obligations be deposited in the Series 1999 Bond Anticipation Notes Payment Fund will be sufficient to repay only a portion of the Outstanding principal amount of the Notes, that on the maturity date of the notes, the Issuer issue an additional bond anticipation note or notes to the Authority on behalf of the Infrastructure Council, containing such terms as the Authority and the Infrastructure Council may request, with an aggregate principal amount equal to the principal amount of the Notes not paid in full on the maturity date of the Notes.

D. Upon receipt of the Infrastructure Council's recommendations offered in response to the Customer Growth Report, the Issuer will take such actions as are necessary and convenient to implement the recommendations of the Infrastructure Council, including the adoption of a bond and/or note resolution, the issuance of additional revenue bonds, notes or other obligations payable from the Net Revenues of the System or the issuance of additional bond anticipation notes or both in principal amounts sufficient to convert all of the Outstanding principal amount of the Notes to permanent financing or additional bond anticipation notes.

E. Notwithstanding any other provision of this Resolution, if the Program is amended prior to the maturity date of the Notes to permit the Authority and the DEP to authorize and make loans under the Program for terms in excess of twenty years, the Authority, acting on behalf of the Infrastructure Council and upon providing reasonable written notice to the Issuer, may declare all or any portion of the outstanding principal amount of the Notes to be due and payable prior to maturity.

Section 4.12. Prohibition of Other Debt. So long as the Notes are outstanding, no bonds, notes or other evidences of indebtedness secured by the System or the proceeds of any grants, revenue bonds or bond anticipation notes for the System, shall be issued by the Issuer other than pursuant to Section 4.11 hereof without the prior written consent of the Authority and the Infrastructure Council.

Section 4.13. Investment of Funds. Pending application as provided above, any moneys held in the Series 1999 Bond and Note Construction Trust Fund on account of the proceeds of the Notes and in the Series 1999 Bond Anticipation Notes Payment Fund shall

be invested and reinvested by the Depository Bank or the Commission, as applicable, at the direction of the Issuer to the fullest extent possible under applicable laws, and to the extent practicable, in Qualified Investments having maturities consonant with the required use thereof.

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once a year (or more often if reasonably requested by the Issuer), a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Notes are Outstanding and as long thereafter as necessary to comply with the Code and assure the exclusion of interest, if any, on the Notes from gross income for federal income tax purposes.

[This space intentionally left blank]

ARTICLE V

SYSTEM REVENUES AND APPLICATION THEREOF

Section 5.01. Establishment of Continuation of Funds and Accounts with Depository Bank. The following special funds or accounts are created with (or, if established by a resolution prior to this resolution, continued hereby) and shall be held by the Depository Bank:

- (1) Revenue Fund;
- (2) Renewal and Replacement Fund; and
- (3) Series 1999 Bond and Note Construction Trust Fund (with a separate subaccount to be established for each series of Original Bonds and for the Notes).

Section 5.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby established with the Commission:

- (1) Series 1999 A Bonds Sinking Fund;
 - (a) Within the Series 1999 A Bonds Sinking Fund, the Series 1999 A Bonds Reserve Account;
- (2) Series 1999 B Bonds Sinking Fund;
 - (a) Within the Series 1999 B Bonds Sinking Fund, the Series 1999 B Bonds Reserve Account; and
- (3) Series 1999 Notes Payment Account.

Section 5.03. System Revenues; Flow of Funds. A. The entire Gross Revenues derived from the operation of the System shall be deposited upon receipt in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in this Resolution and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner therein and herein provided.

- (1) The Issuer shall, each month, transfer from the Revenue Fund an amount sufficient to pay current Operating Expenses of the System.
- (2) The Issuer shall next, on the first day of each month (i) commencing 4 months prior to the first date of payment of interest, if any, on the respective series of Bonds for which interest has not been capitalized, apportion and set apart out of the

Revenue Fund and remit to the Commission, for deposit in the respective Sinking Funds, a sum equal to 1/3rd of the amount of interest which will become due on the respective series of Bonds on the next ensuing quarterly interest payment date; provided, that, in the event the period to elapse between the date of such initial deposit in the respective Sinking Fund and the next quarterly interest payment date is less than 4 months, then such monthly payments shall be increased proportionately to provide, one month prior to the next quarterly interest payment date, the required amount of interest coming due on such date, and (ii) on the first day of each month, commencing 4 months prior to the first date of payment of principal on the respective series of Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the respective Sinking Funds, a sum equal to 1/3rd of the amount of principal which will mature and become due on the respective series of Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the respective Sinking Fund and the next quarterly principal payment date is less than 4 months, then such monthly payments shall be increased proportionately to provide, one month prior to the next quarterly principal payment date, the required amount of principal coming due on such date. When additional series of Original Bonds are issued, the payment of interest and principal on said bonds shall be made simultaneously with the payments described in this Section 5.03A(2) and to the extent that Revenues are insufficient to make all of the payments, such payments shall be made, pro rata, among each series of Bonds.

(3) The Issuer shall next transfer from the Revenue Fund and pay to the Commission on the first day of each month, commencing 3 months prior to the first date of payment of principal of each respective series of Bonds, if not fully funded upon issuance of such series of Bonds, for deposit in the respective Reserve Account, an amount equal to 1/120 of the respective Reserve Requirement; provided, that no further payments shall be made into the respective Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the respective Reserve Requirement. When additional series of Original Bonds are issued, the payment of interest and principal on said bonds shall be made simultaneously with the payments described in this Section 5.03A(3) and to the extent that Revenues are insufficient to make all of the payments, such payments shall be made, pro rata, among each series of Bonds.

(4) The Issuer shall next, from the moneys remaining in the Revenue Fund, on the first day of each month, transfer to the Renewal and Replacement Fund a sum equal to 2 1/2% of the Gross Revenues each month, exclusive of any payments for account of any Reserve Account. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, emergency repairs, improvements or extensions to the System; provided, that any deficiencies in the Reserve Account (except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the

maximum extent required hereof) shall be promptly eliminated with moneys from the Renewal and Replacement Fund.

Moneys in the respective Sinking Funds shall be used only for the purposes of paying principal of and interest on the respective series of Bonds as the same shall become due. Moneys in the Reserve Account in the respective Sinking Funds shall be used only for the purpose of paying principal of or interest on the respective series of Bonds, as the same shall come due, when other moneys in the respective Sinking Fund are insufficient therefor, and for no other purpose. Except for the funds required to be deposited in the Rebate Fund, all investment earnings on moneys in the respective Reserve Accounts shall be transferred, not less than once each year, to the respective Bond Construction Trust Funds prior to completion of the Project and thereafter, pro rata, to the respective Sinking Funds.

Any withdrawals from the Reserve Accounts which result in a reduction in the balance of any Reserve Account to an amount below the applicable Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments to the Sinking Funds for payment of debt service on the Bonds have been made in full.

B. As and when additional Bonds ranking on a parity with the Original Bonds are issued, provision shall be made for additional payments into the Sinking Fund sufficient to pay any interest on such additional Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the Reserve Account in an amount equal to the Reserve Requirement.

The Commission is hereby designated as the fiscal agent for the administration of the Sinking Funds created hereunder, and all amounts required for said Sinking Funds shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein.

The payments into the Sinking Funds shall be made on the first day of each month, except that when the first day of any month shall be a Sunday or legal holiday then such payments shall be made on the next succeeding business day, and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Resolution.

Moneys in the Reserve Accounts shall be invested and reinvested by the Commission in accordance with Article VIII hereof.

The Sinking Funds, including the Reserve Accounts therein, shall be used solely and only for, and are hereby pledged for, the purpose of servicing the respective series of Bonds and any additional Bonds ranking on a parity with them that may be issued and Outstanding under the conditions and restrictions hereinafter set forth.

C. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinabove provided, are current and there remains in said Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into the Sinking Funds, including the Reserve Accounts therein, and the Renewal and Replacement Fund during the following month or such longer period as shall be required by the Act, such excess shall be considered as surplus revenues (the "Surplus Revenue"). Surplus Revenues may be used for any lawful purpose of the System.

D. The Issuer shall remit from the Revenue Fund to the Commission or the Depository Bank, on such dates as the Commission or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay any Depository Bank's charges then due.

Simultaneously with the deposits made to the Commission pursuant to Section 5.03A(2) and (3) the Issuer shall remit to the Commission the SRF Administrative Fee.

The Issuer shall complete the "monthly payment form," which form is attached to the Loan Agreement as Exhibit F, and submit a copy of said form along with a copy of its payment check to the Authority by the fifth day of each calendar month.

E. The moneys in excess of the maximum amounts insured by FDIC in the Revenue Fund and the Renewal and Replacement Fund shall at all times be secured, to the full extent thereof in excess of such insured sum, by Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

F. If, on any monthly payment date, the revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove provided, the deficiency shall be made up in the subsequent payments, in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates.

G. All remittances made by the Issuer to the Commission shall clearly identify the fund or account into which each amount is to be deposited.

H. The Gross Revenues of the System shall only be used for purposes of the System.

Section 5.04. Excess Bond and Note Proceeds. Upon completion of construction of the Project, as certified by the Consulting Engineers, and after all costs have been paid, any remaining proceeds of the Series 1999 A Bonds shall be used as directed in writing by the Authority and the DEP and any remaining proceeds of the Series 1999 B Bonds or the Notes shall be used as directed in writing by the Authority and the Infrastructure Council.

ARTICLE VI

APPLICATION OF ORIGINAL BOND AND NOTE PROCEEDS; FUNDS AND ACCOUNTS

Section 6.01. Application of Original Bond and Note Proceeds. From the moneys received from time to time from the sale of any or all of the Original Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Bonds, there shall be deposited with the Commission in the respective Reserve Accounts the sums, if any, set forth in the Supplemental Resolution for funding of said Reserve Accounts.

B. The remaining moneys derived from the sale of the Original Bonds and the Notes shall be deposited by the Issuer, as received from time to time, in the Bond and Note Construction Trust Fund hereinafter established.

C. There is hereby created and established with the Depository Bank a special fund, designated the "Series 1999 Bond and Note Construction Trust Fund," with a separate subaccount to be established for each series of Original Bonds and for the Notes. The Depository Bank shall act as a trustee and fiduciary for the Bondholders and Noteholders with respect to the Bond and Note Construction Trust Fund and shall comply with all requirements with respect to the disposition of the Bond and Note Construction Trust Fund set forth in this Resolution. Moneys in the Bond and Note Construction Trust Fund shall be used solely to pay Costs of the Project and until so transferred or expended, are hereby pledged as additional security for the Bonds.

Section 6.02. Disbursements From the Bond and Note Construction Trust Fund.

A. With respect to the proceeds of the Series 1999 A Bonds, on or before the Closing Date, the Issuer shall have delivered to the Authority a report listing the specific purposes for which the proceeds of the Series 1999 A Bonds will be expended and the disbursement procedures for such proceeds, including an estimated monthly draw schedule.

Except as provided in Section 6.01 hereof, disbursements from the Bond and Note Construction Trust Fund from proceeds of the Series 1999 A Bonds (except for the cost of issuance of the Series 1999 A Bonds which shall be made upon request of the Issuer) shall be made only after submission to, and approval from, the Authority and the DEP of the following:

- (1) A "Payment Requisition Form," attached to the SRF Loan Agreement,
- and

(2) a certificate, signed by the Chairman and the Consulting Engineers, stating:

(A) That none of the items for which the payment is proposed to be made has formed the basis for any disbursements theretofore made;

(B) That each item for which the payment is proposed to be made is or was necessary in connection with the Project and constitutes a Cost of the Project;

(C) That each of such costs has been otherwise properly incurred; and

(D) That payment for each of the items proposed is then due and owing.

B. With respect to the proceeds of the Series 1999 B Bonds and the Notes, on or before the Closing Date, the Issuer shall have delivered to the Infrastructure Council a report listing the specific purposes for which the proceeds of the Series 1999 B will be expended and the disbursement procedures for such proceeds, including an estimated monthly draw schedule.

With respect to the proceeds of the Series 1999 B Bonds and the Notes, each month the Issuer shall provide the Infrastructure Council with a requisition for costs incurred for the Project with such documentation as the Infrastructure Council shall from time to time require. Upon receipt of the proceeds from the Authority, the Issuer shall deposit the proceeds in the Bond and Note Construction Trust Fund and pay any approved costs. Payments for Costs of the Project shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements from the Bond and Note Construction Trust Fund (except for the cost of issuance of the Series 1999 B Bonds or the Notes, which shall be made upon request of the Issuer) shall be made only after submission to, and approval from, the Authority and the Infrastructure Council, of a certificate, signed by the Chairman and the Consulting Engineers, stating that:

(A) That none of the items for which the payment is proposed to be made has formed the basis for any disbursements theretofore made;

(B) That each item for which the payment is proposed to be made is or was necessary in connection with the Project and constitutes a Cost of the Project;

(C) That each of such costs has been otherwise properly incurred; and

(D) That payment for each of the items proposed is then due and owing.

C. In case any contract provides for the retention of a portion of the contract price, the Depository Bank shall disburse from the Bond and Note Construction Trust Fund only the net amount remaining after deduction of any such portion. All payments made from the Bond and Note Construction Trust Fund shall be presumed by the Depository Bank to be made for the purposes set forth in said certificate, and the Depository Bank shall not be required to monitor the application of disbursements from the Bond and Note Construction Trust Fund. The Consulting Engineers shall, from time to time, file with the Depository Bank written statements advising the Depository Bank of its then authorized representative.

Pending such application, moneys in the Bond and Note Construction Trust Fund, including any subaccounts therein, shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

[This space intentionally left blank]

ARTICLE VII

ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01. General Covenants of the Issuer. All the covenants, agreements and provisions set forth in this Resolution shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any owner or owners of the Bonds or the Notes. In addition to the other covenants, agreements and provisions of this Resolution, the Issuer hereby covenants and agrees with the owners of the Bonds and the Notes as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of said Bonds or Notes, or the interest, if any, thereon, is Outstanding and unpaid.

Section 7.02. Bonds and Notes not to be Indebtedness of the Issuer. The Bonds and Notes shall not be nor constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Resolution. No Holder or Holders of any Bonds shall ever have the right to compel the exercise of the taxing power, if any, of the Issuer to pay said Bonds or Notes or the interest, if any, thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of the Original Bonds issued hereunder shall be secured forthwith, equally and ratably, by a first lien on the Net Revenues derived from the operation of the System. The revenues derived from the System, in an amount sufficient to pay the principal of and interest on the Bonds herein authorized and to make the payments into the Sinking Funds, including the Reserve Accounts therein, and all other payments provided for in this Resolution are hereby irrevocably pledged, in the manner provided herein, to the payment of the principal of and interest on the Bonds and for the other purposes provided in the Resolution.

Section 7.04. Rates. Prior to issuance of the Original Bonds and the Notes, equitable rates or charges for the use of and service rendered by the System will be established in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the Secretary, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from said System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted, whenever necessary, so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reductions in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System, (i) to provide for all reasonable expenses of operation, repair and maintenance of the System, including any reserves required by the PSC Order or any supplemental or amendments thereto, and (ii) to leave a balance each Fiscal Year equal to at least 115% of the maximum amount required in any succeeding Fiscal Year for payment

of principal of and interest on the Bonds; provided that, in the event that amounts at least equal to or in excess of the respective Reserve Requirements are on deposit in the respective Reserve Accounts, such balance each Fiscal Year need only equal at least 110% of the maximum amount required in any succeeding Fiscal Year for payment of principal of and interest on the Original Bonds.

Section 7.05. Completion, Operation and Maintenance; Schedule of Cost. The Issuer will expeditiously complete the Project and will maintain the System in good condition and will operate the same as a revenue-producing enterprise in an efficient and economical manner, making such expenditures, for equipment and for renewal, repair and replacement as may be proper for the economical operation and maintenance thereof, from the revenues of said System, in the manner provided in the Resolution.

Upon completion of the Project, the Issuer shall file with the Authority a schedule, in substantially the form of Amended Schedule A to the Program loan application, setting forth the actual costs of the Project and sources of funds therefor.

Section 7.06. Sale of the System. The System may be sold, mortgaged, leased or otherwise disposed of only as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient fully to pay or redeem at or prior to maturity all the Bonds and Notes Outstanding. The proceeds from such sale, mortgage, lease or other disposition of the System shall immediately be remitted to the Commission for deposit in the appropriate Sinking Funds for the Bonds and the Series 1999 Notes Payment Fund, and the Issuer shall direct the Commission to apply such proceeds to the payment of principal and any interest, if any, at maturity of Bonds and Notes about to mature and to the redemption prior to maturity, at the earliest date permitted hereby and at the redemption price, of all other Outstanding Bonds and Notes. Any balance remaining after the redemption or payment of all the Bonds and Notes and the interest, if any, thereon shall be remitted to the Issuer by the Commission, unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. The Board may then, if it be so advised, as evidenced by certificates of the Consulting Engineers, by resolution duly adopted, approve and concur in such finding and provide for the sale of such property if the amount to be received therefor is not in excess of ten thousand dollars (\$10,000), or authorize such sale, lease or other disposition of such property, upon public bidding, if the amount to be received therefor is in excess of ten thousand dollars (\$10,000) but not in excess of fifty thousand dollars (\$50,000). The proceeds of any such sale, lease or other disposition of such property, not in excess of \$10,000, shall be deposited in the Renewal and Replacement Fund. The proceeds derived from any such sale, lease or other disposition of such property, in excess of \$10,000 and not in excess of \$50,000, shall be remitted by the Issuer to the Commission for deposit, or a pro rata basis, in the respective Sinking Funds for

the Bonds and the Series 1999 Notes Payment Fund, and shall be applied only (i) to the redemption of Bonds of the last maturities then Outstanding or to the purchase of Bonds of the last maturities then Outstanding at prices not greater than the redemption price of such Bonds and (ii) to the payment prior to maturity of the Notes. Such payments of such proceeds into the respective Sinking Funds, the Series 1999 Notes Payment Fund or the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said funds by other provisions of this Resolution.

No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom shall be in excess of fifty thousand dollars (\$50,000) and be insufficient to pay or redeem, prior to maturity, all the Bonds and Notes then Outstanding, without the prior approval and consent in writing of the owners, or their duly authorized representatives, of sixty-six and two-thirds percent (66-2/3%) in amount of the Bonds and Notes then Outstanding. The Issuer shall prepare the form of such approval and consent for execution by the then owners of the Bonds and Notes, for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 7.07. Issuance of Other Obligations Payable out of Revenues and General Covenant Against Encumbrances. The Issuer shall not issue any other obligations whatsoever, except pari passu additional Bonds provided for in Section 7.08 hereof, payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Bonds; provided, however, that additional Parity Bonds may be issued as provided in Section 7.08 hereafter. All obligations hereafter issued by the Issuer payable from the revenues of the System, except such additional Parity Bonds, shall contain an express statement that such obligations are junior and subordinate as to lien on and source of and security for payment from such revenues and in all other respects to the Bonds to the extent such are Outstanding; provided, that no such subordinate obligations shall be issued unless all payments required to be made into the respective Reserve Accounts and the Renewal and Replacement Fund, at the time of the issuance of such subordinate obligations, have been made and are current.

In addition to the provisions and limitations stated in the preceding paragraph, the Issuer shall not issue any other obligations whatsoever payable from the revenues of the System so long as any portion of principal amount of the Notes or any additional bond anticipation notes issued for the purpose of renewing a portion of the original principal amount of the Notes is outstanding, unless the Issuer has secured the prior written consent of the Infrastructure Council and the Authority. The limitations imposed by the preceding sentence shall apply equally (i) in the case all or any portion of the aggregate principal amount of the Bonds is Outstanding and the obligations sought to be issued would rank prior to, equally, or junior and subordinate to such Outstanding Bonds as to lien on and source and security for payment with such Bonds; or (ii) in the case the aggregate principal amount of the Bonds has been paid in full or defeased pursuant to Section 10.01 hereof.

Except as provided above, the Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or, except with respect to said *pari passu* additional Bonds, being on a parity with the lien of the Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Bonds and the interest thereon in this Resolution or upon the System or any part thereof.

The Issuer shall give the Authority, the Infrastructure Council and the DEP prior written notice of its issuance of any other obligations to be used for the Project, payable from the revenues of the System or from any grants for the Project, or any other obligations related to the Project or the System.

Section 7.08. Parity Bonds. No Parity Bonds payable out of the revenues of the System shall be issued after the issuance of any Bonds pursuant to this Resolution, except under the conditions and in the manner herein provided and with the prior written consent of DEP, the Infrastructure Council and the Authority.

No Parity Bonds shall be issued, except for the purpose of financing the costs of the acquisition or construction of extensions, additions, betterments or improvements to the System or refunding the entirety of one or more issues or series of bonds or both such purposes.

No Parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the Secretary a written statement by Independent Accountants, based upon the necessary investigation and certification by the Consulting Engineers, reciting the conclusion that the net revenues actually derived, subject to the adjustments hereinafter provided, from the System during any twelve (12) consecutive months within the eighteen (18) months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual net revenues to be received in each of the three (3) succeeding years after the completion of the improvements to be financed by such additional Parity Bonds, shall not be less than one hundred fifteen percent (115%) of the maximum debt service in any succeeding year on the following:

- (1) Each series of Original Bonds then Outstanding;
- (2) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Resolution then Outstanding; and
- (3) The Parity Bonds then proposed to be issued.

The "estimated average increased annual net revenues to be received in each of the three (3) succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased net revenues estimated to be derived from any increase in rates enacted by the Issuer, the time for appeal of which shall have expired

prior to the date of delivery of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Consulting Engineers, which shall be filed in the office of the Secretary prior to the issuance of such additional Parity Bonds.

The Net Revenues actually derived from the System during the twelve (12) consecutive month period hereinabove referred to may be adjusted by adding to such net revenues such additional net revenues which would have been received, in the opinion of the Consulting Engineers and the Independent Accountants as stated in a certificate jointly made and signed by the Consulting Engineers and the Independent Accountants, on account of increased rates, rentals, fees and charges for the System enacted by the Issuer, the time for appeal of which shall have expired prior to issuance of such Parity Bonds.

Not later than simultaneously with the delivery of such Parity Bonds, the Issuer shall have entered into written contracts for the immediate acquisition or construction of such extensions, additions, betterments or improvements to the System which are to be financed by such Parity Bonds.

All the covenants and other provisions of this Resolution (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the owners of the Original Bonds and the owners of any Parity Bonds subsequently issued, from time to time, within the limitations of and in compliance with this Section. All the Bonds, regardless of the time or times of their issuance shall rank equally with respect to their respective liens on the revenues of the System, and their respective sources of and security for payment from said revenues, without preference of any Bond over any other. The Issuer shall comply fully with all the increased payments into the various funds created in this Resolution required for and on account of such additional Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Resolution.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior lien of the Outstanding Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from the revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such revenues, with the Bonds.

No Parity Bonds shall be issued at any time, however, unless all the payments into the respective funds and accounts provided for in this Resolution on account of the Bonds then Outstanding, and any other payments provided for in this Resolution, shall have been made in full as required to the date of delivery of the Parity Bonds, and the Issuer shall then be in full compliance with all the covenants, agreements and terms of this Resolution.

Section 7.09. Insurance and Construction Bonds. The Issuer will carry such insurance and in such amounts as is customarily carried with respect to works and properties similar to the System, with a reputable insurance carrier or carriers, against loss or damage

by fire, explosion, hurricane, earthquake, cyclone, occupancy or other hazards and risks. The Issuer will require that each of its contractors and all subcontractors maintain, during the life of the construction contract, workers' compensation coverage, public liability insurance, property damage insurance and vehicle liability insurance in amounts and on terms satisfactory to the Authority, the Infrastructure Council and the DEP, so long as the Authority is the Owner of the Bonds. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) on a one hundred percent (100%) basis (completed value form) on the insurable portion of the Project, to protect the interests of the Issuer, the Authority, the prime contractor and all subcontractors as their interests may appear, in accordance with the Loan Agreements, during construction of the Project in the full insurable value thereof. In time of war, the Issuer shall also carry in said amount such insurance as may be available against loss or damage by the risks and hazards of war. The proceeds of all such insurance policies shall be disposed of as provided in the Resolution and otherwise shall be placed in the Renewal and Replacement Fund and used only for the repair and restoration of the damaged or destroyed properties or for the other purposes provided herein for said Renewal and Replacement Fund. The Issuer shall also carry liability insurance for damage or injury to persons or property in amounts adequate for such purposes and customarily carried with respect to works and properties similar to the System. The Issuer shall carry such other insurance as is required by the Authority, the Infrastructure Council and DEP and as set forth in the Loan Agreements, including but not limited to flood insurance and business interruption insurance, to the extent available at reasonable cost to the Issuer.

The Issuer shall require all contractors engaged in the construction of the Project to furnish a performance bond and a payment bond, each in an amount equal to 100% of the contract price of the portion of the Project covered by the particular contract, as security for the faithful performance of such contract.

Section 7.10. Consulting Engineers. The Issuer shall provide and maintain competent and adequate resident engineering services satisfactory to the Authority, the Infrastructure Council and the DEP covering the supervision and inspection of the development and construction of the Project and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers. Such resident engineer shall certify to the Authority, the DEP and the Issuer, at the completion of construction, that construction is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies. The Issuer shall require the Consulting Engineers to submit Recipient As-Built Plans, as defined in the SRF Regulations, to it within 60 days of the completion of the Project. The Issuer shall notify the DEP in writing of such receipt. The Issuer shall submit a Performance Certificate, the form of which is attached as Exhibit A to the SRF Loan Agreement and is incorporated herein by reference, to the DEP within 60 days of the end of the first year after the Project is completed.

The Issuer shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the SRF Regulations, to the DEP when the Project

is 90% completed. The Issuer agrees that it will, at all times, provide operation and maintenance of the System to comply with any and all State and federal standards. The Issuer agrees that qualified operating personnel, properly certified by the State, will be employed before the Project is 25% complete and agrees that it will retain such a certified operator(s) to operate the System during the entire term of the SRF Loan Agreement. The Issuer shall notify the DEP in writing of the certified operator employed at the 25% completion stage.

The Issuer agrees that qualified operating personnel, properly certified by the State, will be retained to operate the System during the entire terms of the Loan Agreements.

Section 7.11. Compliance With Loan Agreements, Rules and Regulations. The Issuer hereby covenants and agrees to perform and satisfy all terms and conditions of the Loan Agreements and to comply with all applicable laws, rules and regulations issued by the Authority, the Infrastructure Council, the DEP or other State, federal or local bodies in regard to the construction of the Project and operation, maintenance and use of the System. Notwithstanding anything herein to the contrary, the Issuer will provide the DEP and the Infrastructure Council with copies of all documents submitted to the Authority.

Section 7.12. No Free Services. The Issuer will not render or cause to be rendered any free services, of any nature, by its System; and, in the event the Issuer or any department, agency, instrumentality, officer or employee of the Issuer shall avail itself or himself or herself of the facilities or services provided by the System or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. Such charges shall be paid as they accrue, and the Issuer shall transfer from its general funds sufficient sums to pay such charges for service to any of its departments or properties. The revenues so received shall be deemed to be revenues derived from the operation of the System and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 7.13. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rates, rentals or other charges for the services and facilities of the System and take all steps, actions and proceedings for the enforcement and collection of such fees, rates, rentals or other charges that shall become delinquent to the full extent permitted or authorized by the laws of the State of West Virginia. All such rates and charges, if not paid when due, shall become a lien on the premises served by the System.

Whenever any rates, rentals or charges for the services or facilities of the System, or of the waterworks system or sewerage system constituting a part thereof, shall remain unpaid for a period of thirty (30) days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. The Issuer further covenants and agrees that it will, to the full extent permitted by law, and any rules and regulations promulgated by the PSC applicable thereto, discontinue and shut off both the

water and sewerage services and facilities of the System to all delinquent users of the services and facilities of the System, or of the waterworks system or sewerage system constituting a part thereof, and will not restore either water or sewerage services of the System until all delinquent charges for the service and facilities of the System, or of the waterworks system or sewerage system constituting a part thereof, plus reasonable interest penalty charges for the restoration of service, have been fully paid.

Section 7.14. No Competing Franchise. To the extent allowable by law, the Issuer will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation or body, or agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 7.15. Books, Records and Facilities. The Issuer shall keep complete and accurate records of the cost of acquiring the Project site and the costs of acquiring, constructing and installing the Project. The Issuer shall permit the Authority, the Infrastructure Council, and the DEP, or their agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System, at all reasonable times, for the purpose of audit and examination. The Issuer shall submit to the Authority, the Infrastructure Council, and the DEP such documents and information as they may reasonably require in connection with the acquisition, construction and installation of the Project, the operation and maintenance of the System and the administration of the Loan Agreements or Grant Receipts or other sources of financing for the Project.

The Issuer shall permit the Authority, the Infrastructure Council and the DEP, or their agents and representatives, to inspect all records pertaining to the operation of the System, at all reasonable times, following completion of construction of the Project and commencement of operation thereof, or, if the Project is an improvement to an existing system, at any reasonable time following commencement of construction.

The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any owner of a Bond or Bonds issued pursuant to the Resolution shall have the right, at all reasonable times, to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

The accounting system for the System shall follow currently accepted accounting practices in accordance with the rules and regulations of the PSC and the Act. Separate control accounting records shall be maintained by the Issuer. Subsidiary records as may be required shall be kept in the manner, on the forms, in the books, and along with other bookkeeping records as prescribed by the Issuer. The Issuer shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the Issuer shall be reported to such agent of the Issuer as the Board shall direct.

The Issuer shall file with the Consulting Engineers and the Authority, the Infrastructure Council and DEP, and shall mail in each year to any owner or owners of Bonds requesting the same, an annual report containing the following:

(A) A statement of Gross Revenues, Operating Expenses, Net Revenues and Surplus Revenues derived from and relating to the System.

(B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Resolution with respect to said Bonds and the status of all said funds and accounts.

(C) The amount of any Bonds or other obligations Outstanding and secured by a lien on the Net Revenues of the System.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be completely audited by Independent Accountants in compliance with the applicable OMB Circular, or any successors thereto, and the Single Audit Act, or any successors thereto, and shall mail upon request, and make available generally, the report of said Independent Accountants, or a summary thereof, to any owner or owners of Bonds issued pursuant to this Resolution, and shall submit said report to the Authority, the Infrastructure Council and the DEP. The report of said audit shall include a statement that the Issuer is in compliance with the terms and provisions of the Act and the Loan Agreements and that the Issuer's revenues are adequate to meet its operation and maintenance expenses and debt service requirements.

The Issuer shall, commencing on the date contracts are executed for the construction of the Project and for two years following the completion of the Project, each month complete a Monthly Financial Report and forward a copy by the 10th of each month to the Authority, the Infrastructure Council and the DEP.

The Issuer shall, during construction of the Project, complete Payment Requisition Forms, the form of which is attached to the SRF Loan Agreement as Exhibit C and is incorporated herein by reference, and forward a copy to the DEP in compliance with the Issuer's construction schedule.

The Issuer shall provide the DEP with all appropriate documentation to comply with any special conditions established by federal and/or state regulations as set forth in Exhibit E of the SRF Loan Agreement or as promulgated from time to time.

The Issuer shall permit the Authority, the Infrastructure Council or the DEP, or their agents and representatives, to enter and inspect the Project site and Project facilities at all reasonable times. Prior to, during and after completion of construction of the Project, the Issuer shall also provide the Authority, the Infrastructure Council and the DEP, or their agents and representatives, with access to the System site and System facilities as may be

reasonably necessary to accomplish all of the powers and rights of the Authority, the Infrastructure Council and the DEP with respect to the System pursuant to the Act.

Section 7.16. Operating Budget. The Issuer shall, annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the Authority, the Infrastructure Council and the DEP within thirty days of the adoption thereof. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by the Consulting Engineers, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Board shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made, except upon the further certificate of the Consulting Engineers that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Authority and to any Holder of any Bonds who shall file his address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to any Holder of any Bonds or anyone acting for and in behalf of such Holder of any Bonds.

Section 7.17. Mandatory Connection. The mandatory use of the System is essential and necessary to protect and preserve the public health, comfort, safety, convenience and welfare of the inhabitants and residents of, and the economy of, the Issuer and to assure the rendering harmless of sewage and water-borne waste matter produced or arising within the territory served by the System. Accordingly, every owner, tenant or occupant of any house, dwelling or building located near the System, where sewage will flow by gravity or be transported by such other methods approved by the State Bureau of Public Health from such house, dwelling or building into the System, to the extent permitted by the laws of the State and the rules and regulations of the PSC shall connect with and use the System and shall cease the use of all other means for the collection, treatment and disposal of sewage and waste matter from such house, dwelling or building where there is such gravity flow or transportation by such other method approved by the State Bureau of Public Health and such house, dwelling or building can be adequately served by the System, and every such owner, tenant or occupant shall, after a 30 day notice of the availability of the System, pay the rates and charges established therefor.

Any such house, dwelling or building from which emanates sewage or water-borne waste matter and which is not so connected with the System is hereby declared and found to be a hazard to the health, safety, comfort and welfare of the inhabitants of the Issuer

and a public nuisance, which shall be abated to the extent permitted by law and as promptly as possible by proceedings in a court of competent jurisdiction.

Section 7.18. Statutory Mortgage Lien. For the further protection of the Bondholders, a statutory mortgage lien upon the System is granted and created by the Bond Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding and shall take effect immediately upon delivery of the Bonds and shall be for the benefit of all Owners of the Bonds.

Section 7.19. PSC Order. The Issuer shall comply with the conditions of the PSC Order and any supplement or amendment thereto.

Section 7.20. Covenant to Amend Resolution. The Issuer retains the right to make any amendments, insertions or deletions by Supplemental Resolution of this Resolution as the Issuer deems necessary prior to the issuance of the Bonds to meet the requirements of the Authority and the Infrastructure Council.

Section 7.21. Compensation of the Issuer. The Issuer hereby covenants and agrees that no compensation for policy direction shall be paid to the members of the Board of the Issuer in excess of the amount permitted by the Act. Payment of any compensation to any such member for policy direction shall not be made if such payment would cause the Net Revenues to fall below the amount required to meet all payments provided for herein, nor when there is a default in the performance of or compliance with any covenants or provision hereof.

Section 7.22. Securities Law Compliance. The Issuer will provide the Authority, in a timely manner, with any and all information that may be requested of it (including its annual audit report, financial statements, related information and notices of changes in usage and customer base) so that the Authority may comply with the provisions of SEC Rule 15c2-12 (17 CFR Part 240).

ARTICLE VIII

INVESTMENT OF FUNDS

Section 8.01. Investments. Any moneys held as a part of the funds and accounts created by this Resolution, other than the Revenue Fund, shall be invested and reinvested by the Commission or the Depository Bank, as the case may be, at the written direction of the Issuer in any Qualified Investments to the fullest extent possible under applicable laws, this Resolution, the need for such moneys for the purposes set forth herein and the specific restrictions and provisions set forth in this Section 8.01.

Except as specifically provided herein, any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, including but not limited to those in the Bond and Note Construction Trust Fund, and used for the purpose of such fund or account. The interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the Owner, including the value of accrued interest and giving effect to the amortization of discount and investments in the "consolidated fund" of the West Virginia Board of Investments shall be valued at par. The Commission or the Depository Bank, as the case may be, shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. Such Depository Bank may make any and all investments permitted by this Section through its own bond department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

Notwithstanding the foregoing, any investments made pursuant to this Resolution shall comply with the guidelines of the Authority and the Infrastructure Council.

ARTICLE IX

DEFAULT AND REMEDIES

Section 9.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Bonds:

(A) If default occurs in the due and punctual payment of the principal of or interest on any series of Original Bonds; or

(B) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to such Bonds set forth in this Resolution, any supplemental Resolution, or in such Bonds, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by any bank or banking association holding any fund or account hereunder or an owner of such Bonds; or

(C) If the Issuer files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America.

Section 9.02. Remedies. Upon the happening and continuance of any Event of Default with respect to any Bonds, any Registered Owner of such Bond may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding, enforce all rights of such registered Owners, including the right to require the Issuer to perform its duties under the Act and the Resolution relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon such Bonds, (iv) by action at law or bill in equity, require the Issuer to account as if it were the trustee of an express trust for the registered Owners of such Bonds, and (v) by action or bill in equity, enjoin any acts in violation of the Resolution with respect to such Bonds, or the rights of such registered Owners.

Section 9.03. Appointment of Receiver. Any Bondholder may, by proper legal action, compel the performance of the duties of the Issuer under the Resolution and the Act, including the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any default in the payment of interest on any Bonds when the same shall become due, or in the payment of the principal of any Bond or Bonds, either at the specified date of maturity thereof or at a date set for redemption thereof, or otherwise in the performance of any covenant contained in the Resolution other than as to such payment and such default shall continue for a period of thirty (30) days after written notice to the Issuer of such default, any Bondholder shall, in addition to all other remedies or rights, have the right, by appropriate

legal proceedings, to obtain the appointment of a receiver to administer the System on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of the Bonds and any interest thereon, the deposits into the funds and accounts hereby established as herein provided and the payment of Operating Expenses of the System and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of the Resolution and the Act.

The receiver so appointed shall forthwith, directly or by his agents and attorneys, enter into and upon and take possession of all facilities of said System and shall hold, operate, maintain, manage and control such facilities, and each and every part thereof, and in the name of the Issuer exercise all the rights and powers of the Issuer with respect to said facilities as the Issuer itself might do.

Whenever all that is due upon the Bonds issued pursuant to the Resolution and interest thereon and under any covenants of the Resolution for reserve, sinking or other funds and upon any other obligations and interest thereon having a charge, lien or encumbrance upon the revenues of the System shall have been paid and made good, and all defaults under the provisions of this Resolution shall have been cured and made good, possession of the System shall be surrendered to the Issuer upon the entry of an order of the court to that effect. Upon any subsequent default, any owner of Bonds issued pursuant to this Resolution shall have the same right to secure the further appointment of a receiver upon any such subsequent default.

Such receiver, in the performance of the powers hereinabove conferred upon him or her, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby and a successor receiver appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and Owners of Bonds issued pursuant to the Resolution. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the possession, operation and maintenance of the System, for the sole purpose of the protection of both the Issuer and Bondholders, and the curing and making good of any default under the provisions of the Resolution, and the title to and ownership of said System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, mortgage or otherwise dispose of any assets of the System.

ARTICLE X

DEFEASANCE

Section 10.01. Defeasance of Bonds. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the Owners of all Bonds the principal thereof, and redemption premium, if applicable, and interest due or to become due thereon, at the times and in the manner stipulated therein and in the Resolution, then the pledge of Net Revenues and any other moneys and securities pledged under this Resolution and all covenants, agreements and other obligations of the Issuer to the Bondholders shall thereupon cease, terminate and become void and be discharged and satisfied.

Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient to pay, as and when due, the principal of and interest on the Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this Section. All Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Commission or its agents, either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with other moneys, if any, deposited with the Commission at the same time, shall be sufficient to pay when due the principal installments and interest due and to become due on said Bonds on and prior to the maturity dates thereof. Neither securities nor moneys deposited with the Commission pursuant to this Section nor principal or interest payments on any such securities shall be withdrawn or used for any purposes other than, and shall be held in trust for, the payment of the principal of and redemption premium, if applicable, on and interest on said Bonds; provided, that any cash received from such principal or interest payments on such securities deposited with the Commission, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal of and redemption premium, if applicable, on and interest to become due on said Bonds on and prior to such redemption date or maturity date thereof, as the case may be, and interest earned from such reinvestments shall be paid over to the Issuer, as received by the Commission, free and clear of any trust, lien or pledge. For the purpose of this Section, securities shall mean and include only Government Obligations.

ARTICLE XI

MISCELLANEOUS

Section 11.01. Modification or Amendment. No material modification or amendment of this Resolution or of any resolution amendatory hereof or supplemental hereto which would materially and adversely affect the rights of Bondholders or Noteholders shall be made without the consent in writing of the owners of two-thirds (2/3) or more in principal amount of the Bonds or Notes then Outstanding and to be affected by said modification; provided, however, that no change shall be made in the maturity of any Bond or Note or the rates of interest, if any, thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest, if any, as provided in this Resolution without the consent of the owner thereof. No amendment or modification shall be made which would reduce the percentage of the principal amount of Bonds or Notes required for consent to the above permitted amendments or modifications.

Section 11.02. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Resolution shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Resolution.

Section 11.03. Table of Contents and Headings. The Table of Contents and the headings of the articles, sections and subsections hereof are for convenience only and shall neither control nor affect in any way the meaning or construction of any of the provisions hereof.

Section 11.04. Repeal of Conflicting Resolutions. All resolutions, resolutions and orders, or parts thereof, in conflict with this Resolution are, to the extent of such conflict, repealed.

Section 11.05. Covenant of Due Procedure. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the final enactment and passage of this Resolution do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Chairman, the Secretary and members of the Board were at all times when any actions in connection with this Resolution occurred, and are, duly in office and duly qualified for such office.

Section 11.06. Effective Date. This Resolution shall take effect immediately upon its adoption.

[SEAL]

LUBECK PUBLIC SERVICE DISTRICT


Chairman, Public Service Board


Secretary, Public Service Board


Treasurer, Public Service Board

CHASFS3:137494-2

CERTIFICATION

Certified as a true copy of the Resolution adopted by the Public Service Board
of Lubeck Public Service District.


Secretary, Public Service Board

[SEAL]

EXHIBIT A

Project Description

The Project consists of the construction of additions, betterments and improvements to the existing wastewater collection system of the Lubeck Public Service District and the construction of a new wastewater treatment facility. These improvements are intended to offer service to approximately 1,200 additional customers. It is expected that 15 existing wastewater treatment facilities will be eliminated as a result of the Project.

The proposed wastewater collection system improvements include construction of approximately 65,200 linear feet of six inch gravity sewers; 116,600 linear feet of eight inch gravity sewers; 6,900 linear feet of ten inch gravity sewers; 9,100 linear feet of 12 inch gravity sewers; 3,000 linear feet of 15 inch gravity sewers; 1,100 linear feet of 16 inch gravity sewers; 11,400 linear feet of 24 inch gravity sewers; 3,000 linear feet of 27 inch gravity sewers; and 3,600 linear feet of 30 inch gravity sewers. Collection system improvements also include approximately 912 manholes, three wastewater pumping stations, 2,800 linear feet of four inch force main, 14,600 linear feet of 16 inch force main, and 2,700 linear feet of 18 inch force main.

The proposed wastewater treatment plant is designed for an average flow of 1.5 million gallons per day (MGD). The treatment facility consists of a mechanical bar screen, grit removal, two 700,000 gallon oxidation ditches, two 251,000 gallon clarifiers, ultraviolet light disinfection, a 270,000 gallon aerobic digester, a belt filter press, an effluent flow meter, and other necessary appurtenances.

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNTS, DATES, MATURITIES, INTEREST RATE, PRINCIPAL PAYMENT SCHEDULES, SALE PRICES AND OTHER TERMS OF THE LUBECK PUBLIC SERVICE DISTRICT SEWERAGE REVENUE BONDS, SERIES 1999 A AND SERIES 1999 B, AND THE LUBECK PUBLIC SERVICE DISTRICT SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 1999; AUTHORIZING AND APPROVING THE SALE AND DELIVERY OF SUCH BONDS AND NOTES TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK FOR THE BONDS AND NOTES; MAKING PROVISIONS FOR THE PAYMENT OF THE BONDS AND NOTES; AND MAKING OTHER PROVISIONS AS TO THE BONDS AND NOTES.

WHEREAS, the Public Service Board (the "Board") of Lubeck Public Service District (the "District"), has duly and officially adopted a Bond and Note Resolution on February 25, 1999 (the "Resolution"), entitled:

RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING SEWERAGE SYSTEM OF THE LUBECK PUBLIC SERVICE DISTRICT AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF, THROUGH THE ISSUANCE BY THE DISTRICT OF SEWERAGE SYSTEM REVENUE BONDS AND SEWERAGE SYSTEM BOND ANTICIPATION NOTES; AUTHORIZING THE ISSUANCE OF TWO SEPARATE SERIES OF SEWERAGE SYSTEM REVENUE BONDS OF THE DISTRICT IN AN AGGREGATE PRINCIPAL AMOUNT OF \$9,950,000 AND THE ISSUANCE OF ONE OR MORE SERIES OF SEWERAGE SYSTEM BOND ANTICIPATION NOTES OF THE DISTRICT IN AN AGGREGATE PRINCIPAL AMOUNT OF \$16,550,000, SUCH BONDS AND NOTES TO BE USED, ALONG WITH OTHER FUNDS AND MONEYS OF, OR AVAILABLE TO, THE DISTRICT WHICH MAY BE LAWFULLY EXPENDED FOR SUCH PURPOSES, TO FINANCE THE COST OF SUCH ACQUISITION AND CONSTRUCTION AND TO PAY OTHER COSTS IN CONNECTION THEREWITH; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE OWNERS OF SUCH BONDS AND NOTES; AUTHORIZING

EXECUTION AND DELIVERY OF ALL DOCUMENTS
RELATING TO THE ISSUANCE OF SUCH BONDS AND
NOTES; APPROVING, RATIFYING AND CONFIRMING
LOAN AGREEMENTS RELATING TO SUCH BONDS AND
NOTES; AND ADOPTING OTHER PROVISIONS RELATED
THERETO.

WHEREAS, the Resolution provides for the issuance of the Lubeck Public Service District Sewerage System Revenue Bonds, Series 1999 A and Series 1999 B (the "Bonds"), in the aggregate principal amount of \$9,500,000, and the issuance of the Lubeck Public Service District Sewerage System Bond Anticipation Notes, Series 1999 (the "Notes"), and has authorized the execution and delivery of loan agreements relating to the Bonds and Notes, including all amendments and supplements (collectively, the "Loan Agreements"), by and among the District and the West Virginia Water Development Authority (the "Authority") on behalf of the West Virginia Division of Environmental Protection ("DEP") and the West Virginia Infrastructure and Jobs Development Council (the "Council"), all in accordance with Chapter 16, Article 13A, Chapter 22C, Article 2, and Chapter 31, Article 15A, of the West Virginia Code of 1931, as amended (collectively, the "Act");

WHEREAS, in the Resolution it is provided that the exact principal amounts, maturity dates, interest rates, interest and principal payment dates, sale prices and other terms of the Bonds and Notes should be established by a supplemental resolution pertaining to the Bonds and Notes; and that other matters relating to the Bonds and Notes be herein provided for;

WHEREAS, the Board deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted and that the exact principal amounts, the prices, the maturity dates, the redemption provisions, the interest rates and the interest and principal payment dates of the Bonds and Notes be fixed hereby in the manner stated herein, and that other matters relating to the Bonds and Notes be herein provided for; and

WHEREAS, capitalized terms not otherwise defined shall have the meanings given such terms in the Resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE PUBLIC SERVICE BOARD OF LUBECK PUBLIC SERVICE DISTRICT AS FOLLOWS:

Section 1. Pursuant to the Resolution and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the:

(A) Lubeck Public Service District Sewerage System Revenue Bonds, Series 1999 A, of the District, originally represented by a single Bond, numbered AR-1, in the principal amount of \$7,950,000 (the "Series 1999 A Bonds"). The Series 1999 A Bonds shall be dated the date of delivery thereof, shall finally mature March 1, 2021, and shall bear no interest. The principal on the Series 1999 A Bonds is payable quarterly on March 1, June

1, September 1 and December 1 of each year, commencing June 1, 2001. The Series 1999 A Bonds shall be subject to redemption upon the written consent of the Authority and the DEP, upon payment of the redemption premium, if any, and upon continued compliance with the SRF Loan Agreement, so long as the Authority shall be the registered owner of the Series 1999 A Bonds, and shall be payable in installments of principal in the amounts as set forth in "Schedule Y," attached thereto and incorporated herein by reference. The District shall pay the 1% SRF Administrative Fee as provided in the SRF Loan Agreement.

(B) Lubeck Public Service District Sewerage System Revenue Bonds, Series 1999 B, of the District, originally represented by a single Bond, numbered BR-1, in the principal amount of \$2,000,000 (the "Series 1999 B Bonds"). The Series 1999 B Bonds shall be dated the date of delivery thereof, shall finally mature March 1, 2039, and shall bear no interest. The principal on the Series 1999 B Bonds is payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing June 1, 2001. The Series 1999 B Bonds shall be subject to redemption upon the written consent of the Authority and the Infrastructure Council, upon payment of the redemption premium, if any, and upon continued compliance with the applicable Loan Agreement, so long as the Authority shall be the registered owner of the Series 1999 B Bonds, and shall be payable in installments of principal in the amounts as set forth in "Schedule Y," attached thereto and incorporated herein by reference.

(C) Lubeck Public Service District Sewerage System Bond Anticipation Notes, the Series 1999, of the District, originally represented by a single Note, numbered R-1, in the principal amount of \$16,550,000 (the "Notes"). The Notes shall be dated the day of delivery thereof, shall be payable in annual installments of \$100.00 (\$100.00) on the first day of June of each year beginning June 1, 2001, with the entire outstanding principal sum payable in full on the 1st day of March, 2006. The Notes shall bear no interest.

Section 2. The Bonds and Notes shall each be issued as a fully registered Bond or Note, both as to principal and interest, if any, and shall be registered to the Authority.

Section 3. All other provisions relating to the Bonds and Notes and the text of the Bonds and Notes shall be in substantially the form provided in the Resolution.

Section 4. The District does hereby ratify the Loan Agreements, copies of which are incorporated herein by reference, and the execution and delivery of the Chairman of the Loan Agreements, and the performance of the obligations contained therein, on behalf of the District are hereby authorized, directed, ratified and approved. The District hereby affirms all covenants and representations made in the Loan Agreements and in the Applications to the DEP, the Council and the Authority. The price of the Bonds and Notes shall be 100% of par value, there being no interest accrued thereon, provided that the proceeds will be advanced from time to time as requisitioned by the District.

Section 5. The District does hereby appoint and designate One Valley Bank, National Association, Charleston, West Virginia, as Registrar (the "Registrar") for the Bonds

and Notes and does approve and accept the Registrar's Agreement to be dated the date of delivery of the Bonds and Notes, by and between the District and the Registrar, in substantially the form attached hereto. The execution and delivery by the Chairman of the Registrar's Agreement, and the performance of the obligations contained therein on behalf of the District, are hereby authorized, approved and directed.

Section 6. The District does hereby appoint and direct the West Virginia Municipal Bond Commission, Charleston, West Virginia, to serve as Paying Agent for the Bonds and Notes.

Section 7. The District does hereby appoint One Valley Bank, National Association, Lubeck Branch, Lubeck, West Virginia, as Depository Bank under the Resolution.

Section 8. The District has established with the Depository Bank a Reserve Account for each series of Bonds pursuant to the Resolution. The Reserve Accounts will be funded with equal payments on a monthly basis, in accordance with and pursuant to the schedule set forth in Section 5.03 of the Resolution, until such Reserve Accounts hold an amount equal to the maximum amount of principal and interest which will mature and become due on each series of Bonds in the then current or any succeeding year. Moneys in the Reserve Accounts and the Sinking Funds (established for the annual payment of principal and interest, if any) will be used solely to pay principal of and interest on the Bonds and will not be available to pay costs of the Project.

Section 9. The proceeds of the Bonds and Notes, as advanced from time to time, shall be deposited in or credited to the Series 1999 Bond and Note Construction Trust Fund, as received from time to time for payment of Costs of the Project, including costs of issuance of the Bonds and Notes.

Section 10. The Chairman and Secretary are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Bonds and Notes hereby and by the Resolution approved and provided for, to the end that the Bonds and Notes may be delivered on or about March 9, 1999, to the Authority pursuant to the Loan Agreements.

Section 11. The financing of the Project in part with proceeds of the Bonds and Notes is in the public interest, serves a public purpose of the District and will promote the health, welfare and safety of the residents of the District.

Section 12. The District hereby determines to invest all moneys in the funds and accounts established by the Resolution held by the Depository Bank until expended, in money market accounts secured by a pledge of Government Obligations, and therefore, the District hereby directs the Depository Bank to take such actions as may be necessary to cause such moneys to be invested in such money market accounts until further directed in writing

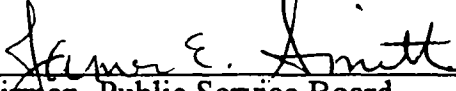
by the District. Moneys in the Sinking Funds, including the Reserve Accounts therein, shall be invested by the Municipal Bond Commission in the West Virginia Consolidated Fund.


Section 13. The District hereby approves the costs of issuance and authorizes the payment of the same.

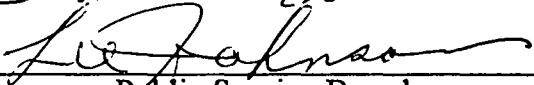
Section 14. This Supplemental Resolution shall be effective immediately following adoption hereof.

Dated: February 25, 1999

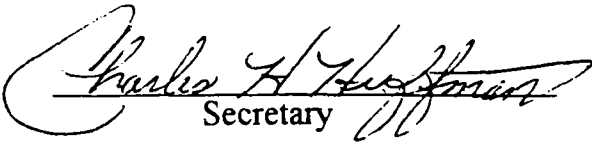
LUBECK PUBLIC SERVICE DISTRICT


Chairman, Public Service Board


Secretary, Public Service Board


Treasurer, Public Service Board

[SEAL]


Secretary

CHASFS3:139860

CERTIFICATION

Certified as a true copy of the Supplemental Resolution adopted by the Public Service Board of Lubeck Public Service District.


Secretary, Public Service Board

[SEAL]

CHASFS3:139860



WEST VIRGINIA

Water Development Authority

Celebrating 30 Years of Service 1974 - 2004

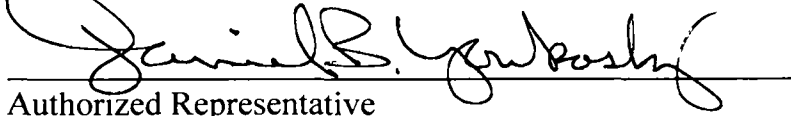
LUBECK PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2005 A
(WEST VIRGINIA INFRASTRUCTURE FUND),
SEWER REVENUE BONDS, SERIES 2005 B
(WEST VIRGINIA INFRASTRUCTURE FUND) AND
SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2005
(WEST VIRGINIA INFRASTRUCTURE FUND)

CONSENT TO ISSUANCE OF BONDS AND NOTES

In reliance upon a certificate of Philip R. Postlewait, Jr., CPA, an independent certified public accountant, stating that the coverage and parity requirements have been met (copy attached), the undersigned duly authorized representative of the West Virginia Water Development Authority, the registered owner of the Prior Bonds, hereinafter defined and described, hereby consents to the issuance of the Sewer Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), in the original aggregate principal amount of \$7,879,443, the Sewer Revenue Bonds, Series 2005 B (West Virginia Infrastructure Fund), in the original aggregate principal of \$2,411,178 (collectively, the "Series 2005 Bonds"), and the Sewerage System Bond Anticipation Notes, Series 2005 (West Virginia Infrastructure Fund), in the original aggregate principal amount of \$6,278,679 (the "Series 2005 Notes"), by Lubeck Public Service District (the "Issuer"), under the terms of the resolutions authorizing the Series 2005 Bonds and the Series 2005 Notes, with the Series 2005 Bonds on a parity with respect to liens, pledge and source of and security for payment with the Issuer's Sewerage System Revenue Bonds, Series 1999 A (West Virginia SRF Program) and Sewerage System Revenue Bonds, Series 1999 B (West Virginia Infrastructure Fund) (collectively, the "Prior Bonds"), and with the Series 2005 Notes junior and subordinate with respect to liens, pledge and source of and security for payment to the Prior Bonds and the Series 2005 Bonds.

WITNESS my signature on this 27th day of September, 2005.

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY


Authorized Representative

LUBECK PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2005 A
(WEST VIRGINIA INFRASTRUCTURE FUND),
SEWER REVENUE BONDS, SERIES 2005 B
(WEST VIRGINIA INFRASTRUCTURE FUND) AND
SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2005
(WEST VIRGINIA INFRASTRUCTURE FUND)

3.1

GENERAL CERTIFICATE ON:

1. TERMS
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS
4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
5. SIGNATURES AND DELIVERY
6. PUBLIC SERVICE COMMISSION ORDER
7. RATES
8. INCUMBENCY AND OFFICIAL NAME
9. LAND AND RIGHTS-OF-WAY
10. MEETINGS
11. INSURANCE
12. LOAN AGREEMENT
13. SPECIMEN BOND AND NOTE
14. EXCHANGE FOR PRIOR NOTES
15. CONFLICTS OF INTEREST
16. COUNTERPARTS

On this 27th day of September, 2005, we, the undersigned CHAIRPERSON and the undersigned SECRETARY of the Public Service Board of Lubeck Public Service District (the "Issuer") and the undersigned ATTORNEY for the Issuer, hereby certify in connection with the Issuer's Sewer Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), Sewer Revenue Bonds, Series 2005 B (West Virginia Infrastructure Fund), and Sewerage System Bond Anticipation Notes, Series 2005 (West Virginia Infrastructure Fund), all dated the date hereof (collectively, the "Bonds" or the "Series 2005 Bonds," or individually, the "Series 2005 A Bonds," the "Series 2005 B Bonds" and the "Series 2005 Notes" or the "Notes"), as follows:

1. TERMS: All capitalized words and terms used in this General Certificate and not otherwise defined herein shall have the same meaning set forth in the Resolution duly adopted by the Issuer on September 22, 2005, the Supplemental Resolution duly adopted by the Issuer on September 22, 2005 (collectively, the "Resolution"), the loan agreements for the Bonds and the Notes by and between the Issuer and the West Virginia Water Development

Authority (the "Authority"), on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), all dated September 27, 2005 (collectively, the "Loan Agreement").

2. NO LITIGATION: No controversy or litigation of any nature is now pending or, to the knowledge of any of the undersigned, threatened, restraining, enjoining or affecting in any manner the authorization, issuance, sale and delivery of the Bonds or the Notes, the acquisition and construction of the Project, the operation of the System, the collection or use of the revenues of the System, or the pledge and security of the Net Revenues for the Bonds or the pledge and security of the proceeds of additional revenue bonds, refunding bonds, bond anticipation notes and grants for the Notes; nor affecting the validity of the Bonds or the Notes or any provisions made or authorized for the payment thereof; nor questioning the existence of the Issuer or the title of the members or officers of the Issuer or the Board thereof to their respective offices; nor questioning any proceedings of the Issuer taken with respect to the authorization, issuance, sale or delivery of the Bonds or the Notes, the acquisition and construction of the Project, the operation of the System, the collection or use of the revenues of the System, or the pledge and security for the Bonds and the Notes.

3. GOVERNMENTAL APPROVALS: All applicable approvals, permits, exemptions, consents, authorizations, registrations, licenses, orders and certificates required by law for the creation and existence of the Issuer, the acquisition and construction of the Project, the operation of the System, the imposition of rates and charges and the issuance of the Bonds and the Notes have been duly and timely obtained and remain in full force and effect.

4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS: There has been no adverse change in the financial condition of the Issuer since the approval, execution and delivery of the Loan Agreement. The Issuer has met all conditions set forth in the Loan Agreement and will provide the financial, institutional, legal and managerial capabilities necessary to complete and operate the Project.

Upon the refunding of the Prior Notes, there are outstanding obligations of the Issuer which will rank on a parity with the Series 2005 Bonds as to liens, pledge and source of and security for payment, being the Sewerage System Revenue Bonds, Series 1999 A (West Virginia SRF Program), dated March 9, 1999, issued in the original aggregate principal amount of \$7,950,000 (the "Series 1999 A Bonds"); and Sewerage System Revenue Bonds, Series 1999 B (West Virginia Infrastructure Fund), dated March 9, 1999, issued in the original aggregate principal amount of \$2,000,000 (the "Series 1999 B Bonds") (collectively, the "Prior Bonds").

The Issuer has obtained (i) the certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Prior Bonds are met; and (ii) the

written consent of the Registered Owners of the Prior Bonds to the issuance of the Series 2005 Bonds on a parity with the Prior Bonds. Other than the Prior Bonds, there are no other outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System. The Issuer is in compliance with all the covenants of the Prior Bonds and the Prior Resolution.

The Series 2005 Notes shall be issued junior and subordinate to the Prior Bonds and the Series 2005 Bonds as to liens, pledge and source of and security for payment.

5. **SIGNATURES AND DELIVERY:** The undersigned Chairperson and Secretary are the duly elected or appointed, qualified and acting officers of the Issuer as indicated by the official titles opposite their signatures below, and are duly authorized to execute and seal the Bonds and the Notes for the Issuer. The seal impressed upon the Bonds and the Notes and this Certificate is the duly authorized, proper and only seal of the Issuer. On the date hereof, the undersigned Chairperson did officially sign all of the Bonds and the Notes, consisting upon original issuance of a single Bond or Note for each series, dated the date hereof, by his or her manual signature; the undersigned Secretary did officially cause the seal of the Issuer to be affixed upon the Bonds and the Notes and to be attested by his or her manual signature; the Registrar did officially authenticate, register and deliver the Bonds and the Notes to a representative of the Authority as the original purchaser of the Bonds and the Notes under the Loan Agreement.

6. **PUBLIC SERVICE COMMISSION ORDER:** The Issuer has received the Order of the Public Service Commission of West Virginia (the "PSC") entered on March 21, 2005, in Case No. 05-0115-PSD-PC, approving the refunding of the Prior Notes through the issuance of the Bonds and the Notes. The time for appeal of such Order has expired prior to the date hereof. Such Order remains in full force and effect.

7. **RATES:** The rates for the System, as approved by the PSC Order entered on July 31, 1998, in Case No. 98-0009-PSD-CN, are currently in effect. The time for appeal for such Order has expired prior to the date hereof and such Order remains in full force and effect.

8. **INCUMBENCY AND OFFICIAL NAME:** The proper corporate title of the Issuer is "Lubeck Public Service District." The Issuer is a public service district and public corporation duly created by The County Commission of Wood County and presently existing under the laws of, and a political subdivision of, the State of West Virginia in Wood County of said State. The governing body of the Issuer is its Public Service Board, consisting of three duly appointed, qualified and acting members, whose names and dates of commencement and termination of their current terms are as follows:

<u>Name</u>	<u>Date of Commencement of Office</u>	<u>Date of Termination of Office</u>
Roger Martin	March 18, 2004	December 31, 2007
Paul Smith	January 29, 2004	December 31, 2009
Jerry Martin	June 30, 2005	December 31, 2005

The duly elected or appointed officers of the Board for 2005 are as follows:

Roger Martin	-	Chairperson
Jerry Martin	-	Secretary
Paul Smith	-	Treasurer

The duly appointed and acting attorney for the Issuer is Richard Hayhurst, Esquire, of Parkersburg, West Virginia.

9. LAND AND RIGHTS-OF-WAY: All land, rights-of-way and easements necessary for the acquisition and construction of the Project and the operation and maintenance of the System have been acquired or can and will be acquired by purchase or, if necessary, by condemnation by the Issuer and are adequate for such purposes and are not or will not be subject to any liens, encumbrances, reservations or exceptions that would adversely affect or interfere in any way with the use thereof for such purposes. The costs thereof, including costs of any properties that may have to be acquired by condemnation, are, in the opinion of all the undersigned, within the ability of the Issuer to pay for the same without jeopardizing the security of or payments on the Bonds or the Notes.

10. MEETINGS: All actions, resolutions, orders and agreements taken, adopted and entered into by or on behalf of the Issuer in any way connected with the issuance of the Bonds or the Notes and the acquisition, construction, operation and financing of the Project or the System were authorized or adopted at meetings of the Board duly and regularly or specifically called and held pursuant to all applicable statutes and the rules of procedure of the Board, and a quorum of duly appointed, qualified and acting members of the Board was present and acting at all times during all such meetings. All notices required to be posted and/or published were so posted and/or published.

11. INSURANCE: The Issuer will maintain or, as appropriate, will require all contractors to maintain worker's compensation, public liability insurance, property damage insurance, standard hazard insurance, builder's risk insurance, flood insurance and business interruption insurance, where applicable, in accordance with the Resolution and the Loan Agreement. All insurance for the System required by the Resolution and the Loan Agreement are in full force and effect.

12. **LOAN AGREEMENT:** As of the date hereof, (i) the representations of the Issuer contained in the Loan Agreement are true and correct in all material respects as if made on the date hereof; (ii) the Loan Agreement does not contain any untrue statements of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; (iii) to the best knowledge of the undersigned, no event affecting the Issuer has occurred since the date of the Loan Agreement, which should be disclosed for the purpose for which it is to be used or which it is necessary to disclose therein in order to make the statements and information therein not misleading; and (iv) the Issuer is in compliance with the Loan Agreement.

13. **SPECIMEN BOND AND NOTE:** Attached hereto as Exhibit A are specimens of the Bonds and the Notes which, except as to execution and authentication, are identical in all respects with the Bonds and the Notes this day delivered to the Authority and being substantially in the form prescribed in the Resolution.

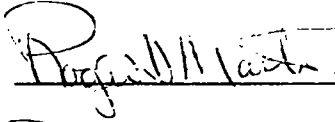
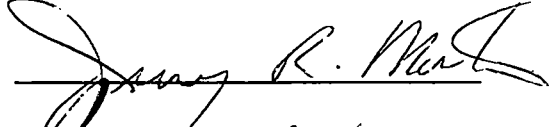

14. **EXCHANGE FOR PRIOR NOTES:** On the date hereof, the Issuer delivered the Series 2005 A Bond in the principal amount of \$7,879,443, the Series 2005 B Bond in the principal amount of \$2,411,178, and the Series 2005 Note in the principal amount of \$6,278,679, to the Authority in exchange for the Prior Notes. Attached hereto as Exhibit B is the final Schedule B, which accurately represents the cost of refunding the Prior Notes and the cost of financing related thereto.

15. **CONFLICTS OF INTEREST:** No member, officer or employee of the Issuer has a substantial financial interest, direct, indirect or by reason of ownership of stock in any corporation, in any contract with the Issuer or the sale of any land, materials, supplies or services to the Issuer, or to any contractor supplying the Issuer, relating to the Bonds or the Notes, the Resolution and/or the Project, including, without limitation, with respect to the Depository Bank. For purposes of this paragraph, a "substantial financial interest" shall include, without limitation, an interest amounting to more than 5% of the particular business enterprise or contract.

16. **COUNTERPARTS:** This Certificate may be executed in counterparts and all counterparts shall be deemed to be the Certificate.

WITNESS our signatures and the official corporate seal of Lubeck Public Service District as of the date first written above.

[SEAL]

<u>Signature</u>	<u>Official Title</u>
	Chairperson
	Secretary
	Attorney

1940

EXHIBIT A

See Specimen Bonds and Note (Tab No. 14).

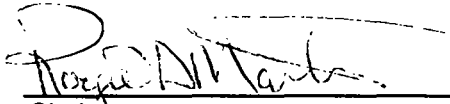
EXHIBIT B

SCHEDULE B

**REFUNDING OF SEWERAGE SYSTEM BOND ANTICIPATION NOTES,
SERIES 1999 (WEST VIRGINIA INFRASTRUCTURE FUND)**

A. COST OF REFUNDING	TOTAL	Original 1999 BAN closed March 9, 1999	New IJDC funds
1 Convert to 2005A bonds	7,879,443.00	7,879,443.00	
2 Convert to 2005B bonds	2,411,178.00	2,411,178.00	
3 Convert to 2005 BAN	6,278,679.00	6,258,679.00	20,000.00
4 TOTAL amount to be restructured	16,569,300.00	16,549,300.00	20,000.00
B. COST OF FINANCING			
5 Bond Counsel	(20,000.00)		(20,000.00)
6 Total Cost of Financing	(20,000.00)		(20,000.00)
7 TOTAL COST OF PROJECT	16,549,300.00	16,549,300.00	0.00
C. REPAYMENTS			
8 Amount repaid on 1999 BAN	700.00	700.00	
9 TOTAL amount repaid (as of August 2005)	700.00	700.00	0.00
10 Total Principal of 1999 BAN	16,550,000.00	16,550,000.00	0.00

Lubeck Public Service District


Chairperson

September 27, 2005

Date

08/26/05
101090/00309

M0464115.1

LUBECK PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2005 A
(WEST VIRGINIA INFRASTRUCTURE FUND),
SEWER REVENUE BONDS, SERIES 2005 B
(WEST VIRGINIA INFRASTRUCTURE FUND) AND
SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2005
(WEST VIRGINIA INFRASTRUCTURE FUND)

3.2

CERTIFICATE AS TO USE OF PROCEEDS

On this 27th day of September, 2005, the undersigned Chairperson of the Public Service Board of Lubeck Public Service District in Wood County, West Virginia (the "Issuer"), being one of the officials of the Issuer duly charged with the responsibility for the issuance of \$7,879,443 Sewer Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), \$2,411,178 Sewer Revenue Bonds, Series 2005 B (West Virginia Infrastructure Fund) and \$6,278,679 Sewerage System Bond Anticipation Notes, Series 2005 (West Virginia Infrastructure Fund), of the Issuer, all dated September 27, 2005 (collectively, the "Bonds" and the "Notes" and individually, the "Series 2005 A Bonds," the "Series 2005 B Bonds" and the "Series 2005 Notes"), hereby certify as follows:

1. I am one of the officers of the Issuer duly charged with the responsibility of issuing the Bonds and the Notes. I am familiar with the facts, circumstances and estimates herein certified and duly authorized to execute and deliver this certificate on behalf of the Issuer. Capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Resolution duly adopted by the Issuer on September 22, 2005 (the "Resolution"), authorizing the Bonds and the Notes.

2. This certificate may be relied upon as the certificate of the Issuer.

3. This certificate is based upon facts, circumstances, estimates and expectations of the Issuer in existence on September 27, 2005, the date on which the Bonds and the Notes are being physically delivered in exchange for the Prior Notes and a portion of the proceeds of the Series 2005 Notes, and to the best of my knowledge and belief, the expectations of the Issuer set forth herein are reasonable.

4. In the Resolution pursuant to which the Bonds and the Notes are issued, the Issuer has covenanted that it shall not take, or permit or suffer to be taken, any action with respect to Issuer's use of the proceeds of the Bonds or the Notes which would cause any bonds, the interest on which is exempt from federal income taxation under Section 103(a) of the Internal Revenue Code of 1986, as amended, and the temporary and permanent regulations

promulgated thereunder or under any predecessor thereto (collectively, the "Code"), issued by the West Virginia Water Development Authority (the "Authority") or the West Virginia Infrastructure and Jobs Development Council (the "Council"), as the case may be, from which the proceeds of the Bonds or the Notes are derived, to lose their status as tax-exempt bonds. The Issuer hereby covenants to take all actions necessary to comply with such covenant.

5. The Series 2005 A Bonds were sold on September 27, 2005, to the Authority, pursuant to a loan agreement dated September 27, 2005, by and between the Issuer and the Authority on behalf of the Council, for an aggregate purchase price of \$7,879,443 (100% of par). The Series 2005 B Bonds were sold on September 27, 2005, to the Authority, pursuant to a loan agreement dated September 27, 2005, by and between the Issuer and the Authority, on behalf of the Council, for an aggregate purchase price of \$2,411,178 (100% of par). The Series 2005 Notes were sold on September 27, 2005, to the Authority, pursuant to a loan agreement dated September 27, 2005, by and between the Issuer and the Authority, on behalf of the Council, for an aggregate purchase price of \$6,278,679 (100% of par). No accrued interest has been or will be paid on the Bonds and the Notes.

6. The Bonds and the Notes are being delivered simultaneously with the delivery of this Certificate and are issued for the purposes of (i) refunding the Issuer's Sewerage System Bond Anticipation Notes, Series 1999 (West Virginia Infrastructure Fund) (the "Prior Notes"), heretofore issued to pay a portion of the costs of acquisition and construction of certain improvements and extensions to the existing public sewer facilities of the Issuer (the "Project"); and (ii) paying certain costs of issuance of the Bonds and the Notes and related costs. The construction of the Project was completed on June 1, 2000.

7. The total cost of refunding the Prior Notes, including the costs of issuance, is estimated at \$16,569,300. Sources and uses are as follows:

SOURCES

Principal of Series 2005 A Bonds	\$ 7,879,443
Principal of Series 2005 B Bonds	2,411,178
Principal of Series 2005 Notes	<u>6,278,679</u>
Total Sources	<u>\$16,569,300</u>

USES

Refunding of Prior Notes	\$16,549,300
Costs of Issuance	<u>20,000</u>
Total Uses	<u>\$16,569,300</u>

8. Pursuant to Article V of the Resolution, the following special funds or accounts have been created:

- (1) Revenue Fund;
- (2) Renewal and Replacement Fund;
- (3) Series 2005 A Bonds Sinking Fund;
- (4) Series 2005 A Bonds Reserve Account;
- (5) Series 2005 B Bonds Sinking Fund;
- (6) Series 2005 B Bonds Reserve Account; and
- (7) Series 2005 Notes Payment Fund.

9. Pursuant to Article VI of the Resolution, the refunding of the Prior Notes will occur as follows:

- (1) The Series 2005 A Bonds, the Series 2005 B Bonds, and the Series 2005 Notes will be delivered to the Authority in exchange for the Prior Notes, which exchange shall release and discharge the liens, pledges and encumbrances securing the Prior Notes.
- (2) Series 2005 Notes proceeds in the amount of \$20,000 will be applied to payment of costs of issuance of the Bonds and the Notes and related costs.

10. Moneys held in the Series 2005 A Bonds Sinking Fund will be used solely to pay principal of and interest, if any, on the Series 2005 A Bonds. All investment earnings on moneys in the Series 2005 A Bonds Reserve Account (if fully funded) shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment, if any, due on the Series 2005 A Bonds, and then to the next ensuing principal payment due thereon.

11. Moneys held in the Series 2005 B Bonds Sinking Fund will be used solely to pay principal of and interest, if any, on the Series 2005 B Bonds. All investment earnings on moneys in the Series 2005 B Bonds Reserve Account (if fully funded) shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall

be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment, if any, due on the Series 2005 B Bonds, and then to the next ensuing principal payment due thereon.

12. Pursuant to Article IV of the Resolution, upon receipt of proceeds of any grants for the System, any sewerage system revenue bonds, refunding revenue bonds or any bond anticipation notes of the Issuer, an amount of the proceeds of such grants, revenue bonds, refunding bonds or bond anticipation notes sufficient to pay all or a portion of the entire outstanding principal of the Notes in full shall be deposited in the Series 2005 Notes Payment Fund. All moneys deposited in the Series 2005 Notes Payment Fund shall be immediately paid by the Commission to the Authority in full payment of the entire outstanding principal of the Notes and then to the Paying Agent for charges, if any, for services rendered.

13. The Issuer will take such steps as requested by the Authority to ensure that the Authority's bonds meet the requirements of the Code.

14. The Issuer does not expect to sell or otherwise dispose of the System in whole or in part prior to the last maturity date of the Bonds and the Notes.

15. The amount designated as costs of issuance of the Bonds and the Notes consists only of costs which are directly related to and necessary for the issuance of the Bonds and the Notes.

16. All property financed with the proceeds of the Prior Notes has been and will be owned and held by (or on behalf of) a qualified governmental unit.

17. The Project has been and will be operated solely for a public purpose as a local governmental activity of the Issuer.

18. The Bonds and the Notes are not federally guaranteed.

19. The Issuer has retained the right to amend the Resolution authorizing the issuance of the Bonds and the Notes if such amendment is necessary to assure that the Bonds and the Notes remain governmental or public purpose bonds.

20. The Issuer has either (a) funded the Series 2005 A Bonds Reserve Account at the maximum amount of principal and interest, if any, which will mature and become due on the Series 2005 A Bonds in the then current or any succeeding year with the proceeds of the Series 2005 A Bonds, or (b) created the Series 2005 A Bonds Reserve Account which will be funded with equal payments made on a monthly basis over a 10-year period until such Series 2005 A Bonds Reserve Account hold an amount equal to the maximum

amount of principal and interest, if any, which will mature and become due on the Series 2005 A Bonds in the then current or any succeeding year. Moneys in the Series 2005 A Bonds Reserve Account and the Series 2005 A Bonds Sinking Fund will be used solely to pay principal of and interest, if any, on the Series 2005 A Bonds.

21. The Issuer has either (a) funded the Series 2005 B Bonds Reserve Account at the maximum amount of principal and interest, if any, which will mature and become due on the Series 2005 B Bonds in the then current or any succeeding year with the proceeds of the Series 2005 B Bonds, or (b) created the Series 2005 B Bonds Reserve Account which will be funded with equal payments made on a monthly basis over a 10-year period until such Series 2005 B Bonds Reserve Account hold an amount equal to the maximum amount of principal and interest, if any, which will mature and become due on the Series 2005 B Bonds in the then current or any succeeding year. Moneys in the Series 2005 B Bonds Reserve Account and the Series 2005 B Bonds Sinking Fund will be used solely to pay principal of and interest, if any, on the Series 2005 B Bonds.

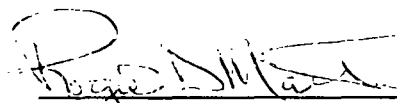
22. There are no other obligations of the Issuer which (a) are to be issued at substantially the same time as the Bonds and the Notes, (b) are to be sold pursuant to a common plan of financing together with the Bonds and the Notes and (c) will be paid out of substantially the same sources of funds or will have substantially the same claim to be paid out of substantially the same sources of funds as the Bonds and the Notes.

23. To the best of my knowledge, information and belief, there are no other facts, estimates and circumstances which would materially change the expectations herein expressed.

24. The Issuer will comply with instructions as may be provided by the Authority, at any time, regarding use and investment of proceeds of the Bonds and the Notes, rebates and rebate calculations.

25. To the best of my knowledge, information and belief, the foregoing expectations are reasonable.

WITNESS my signature as of the date first written above.


Chairperson

08/26/05
015997/00309

LUBECK PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2005 A
(WEST VIRGINIA INFRASTRUCTURE FUND),
SEWER REVENUE BONDS, SERIES 2005 B
(WEST VIRGINIA INFRASTRUCTURE FUND) AND
SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2005
(WEST VIRGINIA INFRASTRUCTURE FUND)

3.3

CERTIFICATE OF SECRETARY
AS TO TRUTH AND ACCURACY OF DOCUMENTS DELIVERED

On this 27th day of September, 2005, the undersigned duly appointed Secretary of Lubeck Public Service District (the "Issuer") hereby certifies that the copies of the following documents being delivered in connection with the closing of the sale of the Lubeck Public Service District Sewer Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), Sewer Revenue Bonds, Series 2005 B (West Virginia Infrastructure Fund) and Sewerage System Bond Anticipation Notes, Series 2005 (West Virginia Infrastructure Fund), are, as of the date hereof, true and accurate copies of the originals of those documents maintained on file with the Issuer and delivered in the transcript of proceedings, that said documents have been duly adopted or approved by the Public Service Board (the "Board") of the Issuer and that said documents are still in full force and effect as of the date hereof and have not been repealed, rescinded, superseded, amended or modified in any way unless the document effecting such repeal, rescission, supersedence, amendment or modification is also listed below:

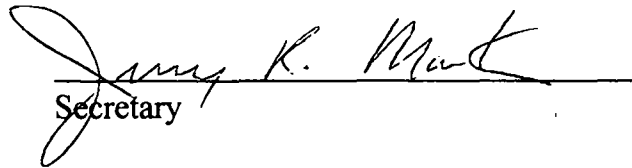
1. Orders of The County Commission of Wood County Creating and Enlarging the Issuer.
2. Orders of The County Commission of Wood County Appointing the Members of the Board.
3. Oaths of Office of the Board Members.
4. Rules of Procedure.
5. Minutes of Current Year Organizational Meeting.
6. Public Service Commission Order.

7. Infrastructure Council Approval Letter.
8. Infrastructure Council Loan Agreements.
9. Bond and Note Resolution.
10. Supplemental Resolution.
11. Minutes of Board Meeting regarding Adoption of Bond and Note Resolution and Supplemental Resolution.
12. Affidavit of Publication regarding Notice of Meeting to Adopt Bond and Note Resolution and Supplemental Resolution.
13. 1999 Bond Resolution.
14. WDA Consent to Issuance of Bonds and Notes.
15. NPDES Permit.
16. Insurance Certificates.

WITNESS my signature and the official seal of the Issuer as of the date first written above.

LUBECK PUBLIC SERVICE DISTRICT

[SEAL]


Secretary

08/26/05
101090/00309

PHILIP R. POSTLEWAIT, JR.

CERTIFIED PUBLIC ACCOUNTANT

P.O. BOX 1281
PARKERSBURG, WEST VIRGINIA 26102
TELEPHONE (304) 422-7444
FACSIMILE (304) 422-4911

September 27, 2005

LUBECK PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2005 A
(WEST VIRGINIA INFRASTRUCTURE FUND),
SEWER REVENUE BONDS, SERIES 2005 B
(WEST VIRGINIA INFRASTRUCTURE FUND) AND
SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2005
(WEST VIRGINIA INFRASTRUCTURE FUND)

Lubeck Public Service District
Washington, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

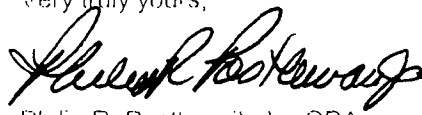
West Virginia Infrastructure and Jobs Development Council
Charleston, West Virginia

Ladies and Gentlemen:

I have reviewed the sewer rates of Lubeck Public Service District (the "Issuer"), as approved by the order of the Public Service Commission of West Virginia entered July 31, 1998, in Case No. 98-0009-PSD-CN, the current operating expenses and the current customer usage provided by the Issuer. It is my opinion that such rates are sufficient (i) to provide for all operating expenses of the sewerage facilities of the Issuer (the "System") and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest on the Issuer's Sewerage System Revenue Bonds, Series 1999 A (West Virginia SRF Program); Sewerage System Revenue Bonds, Series 1999 B (West Virginia Infrastructure Fund) (collectively, the "Prior Bonds"); Sewer Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund); and Sewer Revenue Bonds, Series 2005 B (West Virginia Infrastructure Fund) (collectively, the "Series 2005 Bonds").

It is further my opinion that the Net Revenues actually derived from the System during any 12 consecutive months within the 18 months immediately preceding the date of the actual issuance of the Series 2005 Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by the Series 2005 Bonds, will not be less than 115% of the largest aggregate amount that will mature and become due in any succeeding fiscal year for the principal of and interest on the Prior Bonds and the Series 2005 Bonds.

Very truly yours,



Philip R. Postlewait, Jr., CPA

LUBECK PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2005 A
(WEST VIRGINIA INFRASTRUCTURE FUND),
SEWER REVENUE BONDS, SERIES 2005 B
(WEST VIRGINIA INFRASTRUCTURE FUND) AND
SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2005
(WEST VIRGINIA INFRASTRUCTURE FUND)

3.5

RECEIPT FOR BONDS AND NOTES

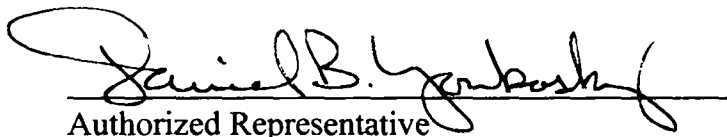
On this 27th day of September, 2005, the undersigned authorized representative of the West Virginia Water Development Authority (the "Authority"), for and on behalf of the Authority, hereby certifies as follows:

1. On the date hereof, in Charleston, West Virginia, the Authority received from Lubeck Public Service District(the "Issuer"), (i) the Sewer Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), dated September 27, 2005, issued in the principal amount of \$7,879,443, numbered AR-1, in the form of one bond, fully registered to the Authority; (ii) the Sewer Revenue Bonds, Series 2005 B (West Virginia Infrastructure Fund), dated September 27, 2005, issued in the principal amount of \$2,411,178, numbered BR-1, in the form of one bond, fully registered to the Authority (collectively, the "Bonds"); and (iii) the Sewerage System Bond Anticipation Notes, Series 2005 (West Virginia Infrastructure Fund), dated September 27, 2005, issued in the principal amount of \$6,278,679, numbered R-1, in the form of one note, fully registered to the Authority (the "Notes").

2. At the time of such receipt of the Bonds and the Notes, they had been executed by the Chairperson of the Issuer and attested by the Secretary of the Issuer, by their respective manual signatures, and the official seal of the Issuer had been impressed thereon.

WITNESS my signature as of the date first written above.

WEST VIRGINIA WATER DEVELOPMENT
AUTHORITY


Authorized Representative

08/26/05
101090/00309

M0464226.1

LUBECK PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2005 A
(WEST VIRGINIA INFRASTRUCTURE FUND),
SEWER REVENUE BONDS, SERIES 2005 B
(WEST VIRGINIA INFRASTRUCTURE FUND) AND
SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2005
(WEST VIRGINIA INFRASTRUCTURE FUND)

3.6

RECEIPT FOR NOTES PROCEEDS AND PRIOR NOTES

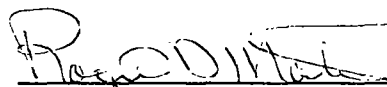
On this 27th day of September, 2005, the undersigned Chairperson of Lubeck Public Service District (the "Issuer"), for and on behalf of the Issuer, hereby certifies as follows:

1. On the date hereof, in Charleston, West Virginia, the Issuer delivered to the West Virginia Water Development Authority (the "Authority"): (i) the Sewer Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), dated September 27, 2005, issued in the principal amount of \$7,879,443, numbered AR-1, in the form of one bond, fully registered to the Authority; (ii) the Sewer Revenue Bonds, Series 2005 B (West Virginia Infrastructure Fund), dated September 27, 2005, issued in the principal amount of \$2,411,178, numbered BR-1, in the form of one bond, fully registered to the Authority (collectively, the "Bonds"); and (iii) the Sewerage System Bond Anticipation Notes, Series 2005 (West Virginia Infrastructure Fund), dated September 27, 2005, issued in the principal amount of \$6,278,679, numbered R-1, in the form of one note, fully registered to the Authority (the "Notes").

2. At the time of such delivery of the Bonds and the Notes, the Issuer received (i) the sum of \$20,000, being a portion of the principal of the Notes; and (ii) the canceled Sewerage System Bond Anticipation Notes, Series 1999 (West Virginia Infrastructure Fund), of the Issuer, dated March 9, 1999, issued in the original principal amount of \$16,550,000, of which \$16,549,300 is presently outstanding.

WITNESS my signature as of the date first written above.

LUBECK PUBLIC SERVICE DISTRICT



Chairperson

08/26/05
101090/00309

M0464272.1

LUBECK PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2005 A
(WEST VIRGINIA INFRASTRUCTURE FUND),
SEWER REVENUE BONDS, SERIES 2005 B
(WEST VIRGINIA INFRASTRUCTURE FUND) AND
SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2005
(WEST VIRGINIA INFRASTRUCTURE FUND)

REQUEST AND AUTHORIZATION TO
AUTHENTICATE, REGISTER AND DELIVER THE BONDS AND NOTES

United Bank, Inc.
Charleston, West Virginia

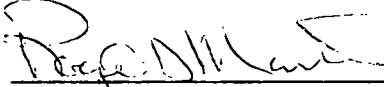
Ladies and Gentlemen:

We herewith hand to you, duly executed, the (i) \$7,879,443 Sewer Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), in the form of one bond, numbered AR-1, dated September 27, 2005; (ii) \$2,411,178 Sewer Revenue Bonds, Series 2005 B (West Virginia Infrastructure Fund), in the form of one bond, numbered BR-1, dated September 27, 2005 (collectively, the "Bonds"); and (iii) \$6,278,679 Sewerage System Bond Anticipation Notes, Series 2005 (West Virginia Infrastructure Fund), in the form of one note, numbered R-1, dated September 27, 2005 (the "Notes"), of Lubeck Public Service District (the "Issuer"), authorized to be issued under and pursuant to a Resolution and a Supplemental Resolution duly adopted by the Issuer on September 22, 2005.

You are hereby requested and authorized to authenticate, register and deliver the Bonds and the Notes on behalf of the Issuer to the West Virginia Water Development Authority.

WITNESS our signatures on this 27th day of September, 2005.


LUBECK PUBLIC SERVICE DISTRICT



Chairperson

(SEAL)

Attest:



Secretary

LUBECK PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2005 A
(WEST VIRGINIA INFRASTRUCTURE FUND),
SEWER REVENUE BONDS, SERIES 2005 B
(WEST VIRGINIA INFRASTRUCTURE FUND) AND
SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2005
(WEST VIRGINIA INFRASTRUCTURE FUND)

3.8

REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 27th day of September, 2005, by and between LUBECK PUBLIC SERVICE DISTRICT, a public corporation (the "Issuer"), and UNITED BANK, INC., Charleston, West Virginia (the "Registrar").

WHEREAS, the Issuer has, contemporaneously with the execution hereof, issued and sold its (i) \$7,879,443 Sewer Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), dated September 27, 2005, numbered AR-1, in the form of one bond, in fully registered form; (ii) \$2,411,178 Sewer Revenue Bonds, Series 2005 B (West Virginia Infrastructure Fund), dated September 27, 2005, numbered BR-1, in the form of one bond, in fully registered form; and (iii) \$6,278,679 Sewerage System Bond Anticipation Notes, Series 2005 (West Virginia Infrastructure Fund), dated September 27, 2005, numbered R-1, in the form of one note, in fully registered form (collectively, the "Bonds"), pursuant to a Resolution and a Supplemental Resolution adopted by the Issuer on September 22, 2005 (collectively, the "Resolution");

WHEREAS, capitalized words and terms used in this Registrar's Agreement and not otherwise defined herein shall have the respective meanings given them in the Resolution, a copy of which is attached as Exhibit A hereto and incorporated herein by reference;

WHEREAS, the Resolution provides for an appointment by the Issuer of a Registrar for the Bonds; and

WHEREAS, the Issuer desires to appoint, and by the Resolution and this Registrar's Agreement does appoint, the Registrar to act as Registrar under the Resolution and to take certain other actions hereinafter set forth;

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. Upon the execution of this Registrar's Agreement by the Issuer and the Registrar and during the term hereof, the Registrar does accept and shall have and carry out the

powers and duties of Registrar for the Bonds, all as set forth in the Resolution, such duties including, among other things, the duties to authenticate, register and deliver Bonds upon original issuance and when properly presented for exchange or transfer, and shall do so with the intention of maintaining the exclusion of interest, if any, on the Bonds from gross income for federal income tax purposes, in accordance with any rules and regulations promulgated by the United States Treasury Department or by the Municipal Securities Rulemaking Board or similar regulatory bodies as the Issuer advises it of and with generally accepted industry standards.

2. The Registrar agrees to furnish the Issuer with appropriate records of all transactions carried out by it as Registrar and to furnish the Issuer with the names and specimen signatures of the Registrar's authorized officers for the purposes of acting as the Registrar and with such other information and reports as the Issuer may from time to time reasonably require.

3. The Registrar shall have no responsibility or liability for any action taken by it at the specific direction of the Issuer.

4. As compensation for acting as Registrar pursuant to this Registrar's Agreement, the Issuer hereby agrees to pay to the Registrar the compensation heretofore agreed by the parties and set forth in the attached invoice.

5. It is intended that this Registrar's Agreement shall carry out and implement provisions of the Resolution with respect to the Registrar. In the event of any conflict between the terms of this Registrar's Agreement and the Resolution, the terms of the Resolution shall govern.

6. The Issuer and the Registrar each warrants and represents that it is duly authorized and empowered to execute and enter into this Registrar's Agreement and that neither such execution nor the performance of its duties hereunder or under the Resolution will violate any order, decree or agreement to which it is a party or by which it is bound.

7. This Registrar's Agreement may be terminated by either party upon 60 days' written notice sent by registered or certified mail to the other party, at the following respective address:

ISSUER:

Lubeck Public Service District
P.O. Box 700
Washington, WV 26181
Attention: Chairperson

REGISTRAR:

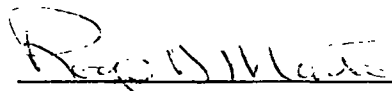
United Bank, Inc.
500 Virginia Street East
Charleston, WV 25301
Attention: Corporate Trust Department

The Issuer and the Registrar shall notify the other in writing of any change of address.

8. The Registrar is hereby requested and authorized to authenticate, register and deliver the Bonds in accordance with the Resolution.

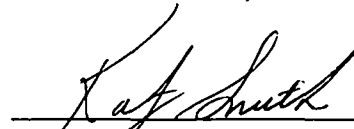
IN WITNESS WHEREOF, the parties hereto have respectively caused this Registrar's Agreement to be signed in their names and on their behalf, all as of the date first written above.

LUBECK PUBLIC SERVICE DISTRICT



Chairperson

UNITED BANK, INC.



Authorized Officer

EXHIBIT A

See Resolution (Tab No. 10)

See Supplemental Resolution (Tab No. 11)

08/26/05
101090/00309

LUBECK PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2005 A
(WEST VIRGINIA INFRASTRUCTURE FUND),
SEWER REVENUE BONDS, SERIES 2005 B
(WEST VIRGINIA INFRASTRUCTURE FUND) AND
SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2005
(WEST VIRGINIA INFRASTRUCTURE FUND)

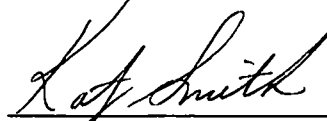
3.9

CERTIFICATE OF REGISTRATION

UNITED BANK, INC., Charleston, West Virginia, as Registrar (the "Registrar"), hereby certifies that on the date hereof, (i) the single, fully registered Sewer Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), of Lubeck Public Service District (the "Issuer"), dated September 27, 2005, in the principal amount of \$7,879,443, numbered AR-1; (ii) the single, fully registered Sewer Revenue Bonds, Series 2005 B (West Virginia Infrastructure Fund), of the Issuer, dated September 27, 2005, in the principal amount of \$2,411,178, numbered BR-1; and (iii) the single, fully registered Sewerage System Bond Anticipation Notes, Series 2005 (West Virginia Infrastructure Fund), of the Issuer, dated September 27, 2005, in the principal amount of \$6,278,679, numbered R-1; were registered as to principal only, in the name of "West Virginia Water Development Authority" in the books of the Issuer kept for that purpose at our office, by a duly authorized officer on behalf of the Registrar.

WITNESS my signature on this 27th day of September 2005.

UNITED BANK, INC.,
as Registrar



Authorized Officer

08/26/05
101090/00309

M0464253.1

WEST VIRGINIA MUNICIPAL BOND COMMISSION

Suite 500

8 Capitol Street, Charleston, WV 25301

(304) 558-3971

3.10(A)

NEW ISSUE REPORT FORMDate of Report: September 27, 2005

ISSUE: <u>Lubeck Public Service District Sewer Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund)</u>	
ADDRESS: <u>P.O. Box 700, Washington, WV 26181</u>	COUNTY: <u>Wood</u>
PURPOSE OF ISSUE: New Money _____ Refunding: <u>1999 BAN</u>	Refunds issue(s) dated: <u>March 9, 1999</u>
ISSUE DATE: <u>September 27, 2005</u>	CLOSING DATE: <u>September 27, 2005</u>
ISSUE AMOUNT: <u>\$7,879,443</u>	RATE: <u>0%</u>
1st DEBT SERVICE DUE: <u>June 1, 2021</u>	1st PRINCIPAL DUE: <u>June 1, 2021</u>
1st DEBT SERVICE AMOUNT: <u>\$109,436.71</u>	PAYING AGENT: <u>Municipal Bond Commission</u>
BOND COUNSEL: <u>Jackson Kelly PLLC</u> Contact Person: <u>Samme L. Gee, Esquire</u> Phone: <u>(304) 340-1318</u>	UNDERWRITERS COUNSEL: _____ Contact Person: _____ Phone: _____
CLOSING BANK: <u>United Bank, Inc.</u> Contact Person: <u>Carole Allen</u> Phone: <u>(304) 424-8621</u>	ESCROW TRUSTEE: _____ Contact Person: _____ Phone: _____
KNOWLEDGEABLE ISSUER CONTACT: Contact Person: <u>James Cox</u> Position: <u>Manager</u> Phone: <u>(304) 863-3341</u>	OTHER: <u>WV Infrastructure & Jobs Development Council</u> Contact Person: <u>Katy Mallory, P.E.</u> Function: <u>Executive Secretary</u> Phone: <u>(304) 558-4607</u>
DEPOSITS TO MBC AT CLOSE: _____ By _____ Wire _____ _____ Check _____	Accrued Interest: \$ _____ Capitalized Interest: \$ _____ Reserve Account: \$ _____ Other: _____ \$ _____
REFUNDS & TRANSFERS BY MBC AT CLOSE: By _____ Wire _____ To Escrow Trustee: \$ _____ _____ Check _____ To Issuer: \$ _____ _____ IGT _____ To Cons. Invest. Fund \$ _____ _____ To Other: _____ \$ _____	
NOTES: <u>On March 1, 2021, after the Issuer's Series 1999 A Bonds have been paid in full, the Commission shall transfer \$437,747 from the Series 1999 A Bonds Reserve Account into the Series 2005 A Bonds Reserve Account to fully fund such account.</u>	
FOR MUNICIPAL BOND COMMISSION USE ONLY: Documents Required: _____ Transfers Required: _____	

09/06/05

101090/00309

M0464255.1

27A

(304) 558-3971

Date of Report: September 27, 2005

WEST VIRGINIA MUNICIPAL BOND COMMISSION

Suite 500

8 Capitol Street, Charleston, WV 25301

(304) 558-3971

3.10(C)

NEW ISSUE REPORT FORMDate of Report: September 27, 2005ISSUE: Lubeck Public Service District Sewerage System Bond Anticipation Notes, Series 2005 (West Virginia Infrastructure Fund)ADDRESS: P.O. Box 700, Washington, WV 26181 COUNTY: WoodPURPOSE OF ISSUE: New Money _____
Refunding: 1999 BANRefunds issue(s) dated: March 9, 1999ISSUE DATE: September 27, 2005CLOSING DATE: September 27, 2005ISSUE AMOUNT: \$6,278,679RATE: 0%1st DEBT SERVICE DUE: June 1, 20061st PRINCIPAL DUE: June 1, 20061st DEBT SERVICE AMOUNT: \$100PAYING AGENT: Municipal Bond CommissionBOND COUNSEL: Jackson Kelly PLLC
Contact Person: Samme L. Gee, Esquire
Phone: (304) 340-1318UNDERWRITERS COUNSEL: _____
Contact Person: _____
Phone: _____CLOSING BANK: United Bank, Inc.
Contact Person: Carole Allen
Phone: (304) 424-8621ESCROW TRUSTEE: _____
Contact Person: _____
Phone: _____KNOWLEDGEABLE ISSUER CONTACT:
Contact Person: James Cox
Position: Manager
Phone: (304) 863-3341OTHER: WV Infrastructure & Jobs Development Council
Contact Person: Katy Mallory, P.E.
Function: Executive Secretary
Phone: (304) 558-4607

DEPOSITS TO MBC AT CLOSE: _____

Accrued Interest: \$ _____

By _____ Wire _____
_____ Check _____

Capitalized Interest: \$ _____

Reserve Account: \$ _____

Other: \$ _____

REFUNDS & TRANSFERS BY MBC AT CLOSE:

By _____ Wire _____
_____ Check _____
_____ IGT _____

To Escrow Trustee: \$ _____

To Issuer: \$ _____

To Cons. Invest. Fund \$ _____

To Other: \$ _____

NOTES: _____

FOR MUNICIPAL BOND COMMISSION USE ONLY:

Documents Required: _____

Transfers Required: _____



DIVISION OF ENVIRONMENTAL PROTECTION

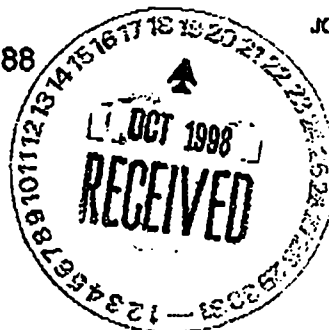
CECIL H. UNDERWOOD
GOVERNOR

1201 Greenbrier Street
Charleston, WV 25311-1088

JOHN E. CAFFREY
DIRECTOR

October 9, 1998

James Cox, Manager
Lubeck Public Service District
P.O. Box 700
Washington, WV 26181-0700



CERTIFIED RETURN RECEIPT REQUESTED

Re: WV/NPDES Permit No. WV0032590
Modification No. 1

Dear Mr. Cox:

This letter serves as Modification No. 1 of your existing WV/NPDES Water Pollution Control Permit No. WV0032590 issued the 31st day of October 1997.

After reviewing your permit and your application for Modification No. WV0032590-A dated the 29th day of April 1998, the above referenced permit is hereby modified to include the installation, acquisition, construction, operation and maintenance of: a new 1.5 MGD sewage collection and treatment system consisting of approximately 65,200 linear feet of six (6) inch gravity sewer line, 116,600 linear feet of eight (8) inch gravity sewer line, 6,900 linear feet of 10 inch gravity sewer line, 9,100 linear feet of 12 inch gravity sewer line, 3,000 linear feet of 15 inch gravity sewer line, 1,100 linear feet of 16 inch gravity sewer line, 11,400 linear feet of 24 inch gravity sewer line, 3,000 linear feet of 27 inch gravity sewer line, 3,600 linear feet of 30 inch gravity sewer line, approximately 912 manholes, three (3) lift stations, 2,800 linear feet of four (4) inch force main, 14,600 linear feet of 16 inch force main, 2,700 linear feet of 18 inch force main, and a 1.5 MGD treatment facility consisting of a mechanical bar screen, a grit removal unit, two (2) 700,000 gallon oxidation ditches, two (2) 251,000 gallon clarifiers, a 56 bulb ultraviolet (UV) light disinfection unit, a 270,000 gallon aerobic digester, a 1.5 meter belt filter press, a continuous effluent flow meter, and all other necessary appurtenances.

The new system is designed to serve 15,000 persons or equivalents in the Lubeck PSD and discharge treated wastewater to the Ohio River through the new Outlet No. 016. The coordinates of the new treatment plant effluent discharge are as follows:

Latitude: 39° 13' 20" N Longitude: 81° 41' 19" W

Upon the completion of the new wastewater treatment system, the new system shall replace 13 existing "package" wastewater treatment facilities operated by the Lubeck PSD.

The information submitted on and with Permit Modification Application No. WV0032590-A dated the 29th day of April 1998 along with the plans and specifications approved by the Construction Assistance Branch on the 6th day of July 1998 is all hereby made terms and conditions of this Permit with like effect as if all such permit modification application information was set forth herein.

**SEWAGE COLLECTION AND TREATMENT FACILITIES TO BE CONSTRUCTED IN
ACCORDANCE WITH:**

Plans, Specifications, and Reports:

Date Approved: July 6, 1998
Prepared by: Burgess & Niple, Limited
4424 Emerson Avenue
Parkersburg, WV 26104

Title: Lubeck Public Service District
Wood County, West Virginia

Contract 98-1 - Wastewater Treatment Plant and Pump Stations Project
Contract 98-3 through 98-9 - Wastewater Collection System

The City shall complete this plant construction project and begin to meet final permit discharge limitations on or before 20 months.

Find enclosed additional pages 19A of 29 and 19B of 29; revised page 20 of 29; and additional Discharge Monitoring Reports. The additional pages and DMRs shall be incorporated into this permit. Also, the revised page shall replace the page currently found in your existing permit.

All other terms and conditions of the subject permit shall remain in effect and unchanged.

Very truly yours,

OFFICE OF WATER RESOURCES



Barbara S. Taylor
Chief

BST/rb



Public Sector Services
P. O. Box 65100
San Antonio, TX 782655100
Phone: 210-527-2700
Fax: 210-527-2800

INSURANCE PROPOSAL

Created for
Lubeck Public Service District

Effective Date
08/01/2005 to 08/01/2006

Bonnie Rick , Territory Manager
Lola Miles-Troutz , Underwriter
07/21/2005

The St. Paul Travelers Companies
A.M. Best Rating A

IMPORTANT: Proposed coverages are provided by the company's forms, subject to the terms, conditions and limitations of the policy (ies) in current use by the company. The policies themselves must be read for specific details. No warranty is made or implied regarding compliance with any bid specifications, unless such provisions are a part of the proposal.

29

Property Special

OPTION 1

Coverage	Limit
Blanket Building/Personal Property #1	\$ 13,449,000
Coinsurance: 90 %	
Valuation: Replacement Cost	
Deductible	\$ 1,000

Equipment Breakdown	Included
Coverage is included in the property limit. Property deductible applies.	
Sublimits:	
Expediting Expense	\$ 250,000
Pollution Clean-Up	\$ 250,000
Spoilage	\$ 250,000

The following additional exclusions apply:
Mold Or Bacteria Exclusion Endorsement With Limited Additional Coverage.

Program Features and Benefits

PROPERTY

Property covered only if described in the statement of values:

- Underground tanks, flues, pipes and drains
- Fences, except as included under the outdoor property additional benefit

Additional Coverages- The following are included in the property limit:

- Debris Removal - up to 25% of paid loss
- Preservation of property moved to another location for 30 days

Additional Benefits

The following additional benefits are included. These benefits are in addition to the property limit and are subject to the property deductible.

	Limit
Accounts Receivable	\$ 100,000
Arson Reward (Not available in New York)	\$ 7,500
Business Income / Extra Expense	\$ 100,000
Communication Equipment	\$ 50,000
Computers	\$ 50,000
Confiscated or Commandeered Property	\$ 100,000
Crime Reward (Not available in New York)	\$ 5,000
Demolition and Increased Cost of Construction	\$ 100,000*
* or 10 percent of the value of the damaged covered building indicated in the statement of values or schedule, whichever is less.	
Fairs, Exhibits, or Displays	\$ 50,000
Fine Arts	\$ 50,000
Fire Department Service Charge	\$ 25,000
Freestanding Signs	\$ 25,000
Grounds Maintenance Equipment	\$ 50,000
Inventory & Appraisals	\$ 10,000
Money & Securities	
Inside Limit	\$ 10,000
Outside Limit	\$ 5,000
Newly Acquired Property - Building for 180 days	\$ 1,000,000
Newly Acquired Property - Personal Property for 180 days	\$ 500,000
Off-Premises Utility Failure - Direct Damage	\$ 50,000
Other People's Property	\$ 25,000
Outdoor Property - Maximum \$1,000 any one item	\$ 50,000
Personal Belongings	\$ 50,000
Pollution Clean-Up and Removal	\$ 25,000

Property in Transit	\$ 50,000
Random Attack-Hacking Event or Computer Virus	\$ 10,000
Sewer Backup	\$ 50,000
Spoilage	\$ 10,000
Temporary Location	\$ 50,000
Valuable Records Research	\$ 100,000

Inland Marine**OPTION 1**

Coverage	Valuation	Deductible	Limit
Contractors Equipment	Actual Cash Value		
Scheduled Equipment- Total values		\$1,000	\$202,120
Catastrophe Limit			\$202,120

The following additional exclusions apply:

<p align="center">Public Entity General Liability Occurrence</p>
--

OPTION 1

Coverage	Limit
General Total Limit	\$ 2,000,000
Products & Completed Work Total Limit	\$ 2,000,000
Personal Injury Each Person Limit	\$ 1,000,000
Advertising Injury Each Person Limit	\$ 1,000,000
Each Event Limit	\$ 1,000,000

The following sub-limits apply:

Premises Damage	\$ 100,000
Medical Expense	Excluded
Sewer Back Up (resulting from negligence)	\$ 100,000
Failure To Supply Services	\$ 500,000

The following deductibles apply:

Deductible Per Event (Property Damage)	\$ 1,000
Deductible Per Event - Sewer Back Up (Bodily Injury/Property Damage)	\$ 2,500
Deductible Per Event - Failure to Supply (Bodily Injury/Property Damage)	\$ 1,000

The following additional exclusions apply:

Mold, Other Fungi, Or Bacteria Exclusion Endorsement

Excluded Operations and Premises

Airport, including any airfield, runway, hangar, terminal, or other property in connection with aviation activities

Dams, levees, or dikes

Day care, day camp, nursery, or similar facility

Electric utility

Fire district or department

Gas utility

Halfway house, emergency shelter, or other group home

Hospital, nursing home, medical clinic, or other type of medical facility

Housing project or authority

Organized or sponsored racing or stunting activity or event involving wheeled vehicles, including skateboards and roller skates

Port, harbor, or terminal district

School district or system

Transportation system

Waterpark

Fireworks displays or exhibitions

LUBECK PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2005 A
(WEST VIRGINIA INFRASTRUCTURE FUND),
SEWER REVENUE BONDS, SERIES 2005 B
(WEST VIRGINIA INFRASTRUCTURE FUND) AND
SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2005
(WEST VIRGINIA INFRASTRUCTURE FUND)

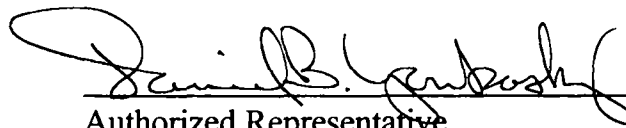
3.13

RECEIPT OF EXCHANGE OF PRIOR NOTES FOR 2005 BONDS AND NOTES

The undersigned duly authorized representative of the West Virginia Water Development Authority, the registered owner of the Sewerage System Bond Anticipation Notes, Series 1999 (West Virginia Infrastructure Fund) (the "Prior Notes"), of Lubeck Public Service District (the "Issuer"), dated March 9, 1999, in the original aggregate principal amount of \$16,550,000, bearing no interest, hereby certifies that it has received the Sewer Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), dated September 27, 2005, in the principal amount of \$7,879,443, the Sewer Revenue Bonds, Series 2005 B (West Virginia Infrastructure Fund), dated September 27, 2005, in the principal amount of \$2,411,178, and the Sewerage System Bond Anticipation Notes, Series 2005 (West Virginia Infrastructure Fund), dated September 27, 2005, in the principal amount of \$6,278,679, from the Issuer in exchange for the Prior Notes and that such exchange is sufficient to release the Prior Notes and discharge the liens, pledges and encumbrances securing the Prior Notes.

WITNESS my signature on this 27th day of September, 2005.

WEST VIRGINIA WATER DEVELOPMENT
AUTHORITY


Authorized Representative

08/26/05
101090/00309

M0463885.1

CLOSING MEMORANDUM

3.14

To: James Cox
Katy Mallory
Barbara Meadows
Samme Gee

From: Francesca Tan

Date: September 27, 2005

Re: Lubeck Public Service District Sewer Revenue Bonds,
Series 2005 A (West Virginia Infrastructure Fund),
Series 2005 B (West Virginia Infrastructure Fund), and
Sewerage System Bond Anticipation Notes,
Series 2005 (West Virginia Infrastructure Fund)

1. DISBURSEMENTS TO DISTRICT

A. Payor: West Virginia Infrastructure Fund
Source: Series 2005 Notes Proceeds
Amount: \$20,000
Date: September 27, 2005
Form: Wire Transfer
Payee: Lubeck Public Service District
Bank: United Bank, Inc., Parkersburg, West Virginia
Routing No.: 051900395
Account No.: 0070128970

08/26/05
101090/00309

September 27, 2005

Lubeck Public Service District
Washington, West Virginia

West Virginia Infrastructure and Jobs Development Council
Charleston, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

Re: Lubeck Public Service District Sewer Revenue Bonds,
Series 2005 A (West Virginia Infrastructure Fund)

Ladies and Gentlemen:

We have served as bond counsel to Lubeck Public Service District (the "Issuer") in connection with the issuance of its Sewer Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), dated the date hereof (the "Bonds").

We have examined certified copies of proceedings and other papers relating to the authorization of (i) a loan agreement for the Bonds, dated September 27, 2005, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), and (ii) the Bonds to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Bonds are issued in the principal amount of \$7,879,443, in the form of one bond, registered to the Authority, bearing no interest, with principal payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing June 1, 2021, all as set forth in the Schedule Y attached to the Loan Agreement and incorporated in and made a part of the Bonds.

The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 16, Article 13A and Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended

M0464263.1

32

Lubeck Public Service District
West Virginia Infrastructure and Jobs Development Council
West Virginia Water Development Authority
September 27, 2005
Page 2

(collectively, the "Act"), for the purpose of refunding the Issuer's Sewerage System Bond Anticipation Notes, Series 1999 (West Virginia Infrastructure Fund) (the "Prior Notes").

We have also examined the applicable provisions of the Act and a Resolution duly adopted by the Issuer on September 22, 2005, as supplemented by a Supplemental Resolution duly adopted by the Issuer on September 22, 2005 (collectively, the "Resolution"), pursuant to and under which Act and Resolution the Bonds are authorized and issued, and the Loan Agreement is entered into. The Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Resolution and the Loan Agreement. All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Resolution and the Loan Agreement when used herein.

Based upon the foregoing and upon our examination of such other documents as we have deemed necessary, we are of the opinion, under existing law, as follows:

1. The Issuer is a duly created and validly existing public service district and is a public corporation and political subdivision of the State of West Virginia, with full power and authority to refund the Prior Notes, to operate and maintain the System, to adopt the Resolution and to issue and sell the Bonds, all under the Act and other applicable provisions of law.
2. The Loan Agreement has been duly authorized by and executed on behalf of the Issuer and is a valid and binding special obligation of the Issuer, enforceable in accordance with the terms thereof.
3. The Loan Agreement inures to the benefit of the Authority and the Council and cannot be amended so as to affect adversely the rights of the Authority and the Council or diminish the obligations of the Issuer, without the written consent of the Authority and the Council.
4. The Issuer has legally and effectively adopted the Resolution and all other necessary resolutions in connection with the issuance and sale of the Bonds. The Resolution constitutes a valid and binding obligation of the Issuer, enforceable against the Issuer in accordance with its terms thereof and contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

5. The Bonds have been duly authorized, issued, executed and delivered by the Issuer to the Authority and are valid, legally enforceable and binding special obligations of the Issuer, payable from the Net Revenues of the System and secured by a first lien on and a pledge of the Net Revenues of the System, on a parity with respect to liens, pledge and source of and security for payment with the Issuer's Sewerage System Revenue Bonds, Series 1999 A (West Virginia SRF Program), Sewerage System Revenue Bonds, Series 1999 B (West Virginia Infrastructure Fund) and Sewer Revenue Bonds, Series 2005 B (West Virginia Infrastructure Fund), issued concurrently herewith, all in accordance with the terms of the Bonds and the Resolution.

6. Under the Act, the Bonds and the interest thereon are exempt from taxation by the State of West Virginia and the other taxing bodies of the State.

7. The Bonds have not been issued on the basis that the interest, if any, thereon is or will be excluded from the gross income of the owners thereof for federal income tax purposes. We express no opinion regarding the excludability of such interest, if any, from the gross income of the owners thereof for federal income tax purposes or other federal tax consequences arising with respect to the Bonds.

8. The Prior Notes have been paid within the meaning and with the effect expressed in the Prior Resolution, and the covenants, agreements and other obligations of the Issuer to the registered owners of the Prior Notes have been satisfied and discharged. In rendering the opinion set forth in this paragraph, we have relied upon the certificate of the West Virginia Water Development Authority stating that it has received the Series 2005 A Bonds, the Series 2005 B Bonds and the Series 2005 Notes in exchange for the Prior Notes and that such exchange is sufficient to release and discharge the liens, pledges and encumbrances securing the Prior Notes.

No opinion is given herein as to the effect upon the enforceability of the Bonds under any applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights or the exercise of judicial discretion or principles of equity in appropriate cases.

Lubeck Public Service District
West Virginia Infrastructure and Jobs Development Council
West Virginia Water Development Authority
September 27, 2005
Page 4

We have examined the executed and authenticated Bond numbered AR-1 and in our opinion, the form of said Bond and its execution and authentication are regular and proper.

Very truly yours,

A handwritten signature in black ink that reads "Jack Kelly PLLC". The signature is written in a cursive, flowing style.

09/02/05
101090/00309

September 27, 2005

Lubeck Public Service District
Washington, West Virginia

West Virginia Infrastructure and Jobs Development Council
Charleston, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

Re: Lubeck Public Service District Sewer Revenue Bonds,
Series 2005 B (West Virginia Infrastructure Fund)

Ladies and Gentlemen:

We have served as bond counsel to Lubeck Public Service District (the "Issuer") in connection with the issuance of its Sewer Revenue Bonds, Series 2005 B (West Virginia Infrastructure Fund), dated the date hereof (the "Bonds").

We have examined certified copies of proceedings and other papers relating to the authorization of (i) a loan agreement for the Bonds, dated September 27, 2005, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), and (ii) the Bonds to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Bonds are issued in the principal amount of \$2,411,178, in the form of one bond, registered to the Authority, bearing no interest, with principal payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 2009, all as set forth in the Schedule Y attached to the Loan Agreement and incorporated in and made a part of the Bonds.

The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 16, Article 13A and Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended

M0464394.1

33

Lubeck Public Service District
West Virginia Infrastructure and Jobs Development Council
West Virginia Water Development Authority
September 27, 2005
Page 2

(collectively, the "Act"), for the purpose of refunding the Issuer's Sewerage System Bond Anticipation Notes, Series 1999 (West Virginia Infrastructure Fund) (the "Prior Notes").

We have also examined the applicable provisions of the Act and a Resolution duly adopted by the Issuer on September 22, 2005, as supplemented by a Supplemental Resolution duly adopted by the Issuer on September 22, 2005 (collectively, the "Resolution"), pursuant to and under which Act and Resolution the Bonds are authorized and issued, and the Loan Agreement is entered into. The Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Resolution and the Loan Agreement. All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Resolution and the Loan Agreement when used herein.

Based upon the foregoing and upon our examination of such other documents as we have deemed necessary, we are of the opinion, under existing law, as follows:

1. The Issuer is a duly created and validly existing public service district and is a public corporation and political subdivision of the State of West Virginia, with full power and authority to refund the Prior Notes, to operate and maintain the System, to adopt the Resolution and to issue and sell the Bonds, all under the Act and other applicable provisions of law.
2. The Loan Agreement has been duly authorized by and executed on behalf of the Issuer and is a valid and binding special obligation of the Issuer, enforceable in accordance with the terms thereof.
3. The Loan Agreement inures to the benefit of the Authority and the Council and cannot be amended so as to affect adversely the rights of the Authority and the Council or diminish the obligations of the Issuer, without the written consent of the Authority and the Council.
4. The Issuer has legally and effectively adopted the Resolution and all other necessary resolutions in connection with the issuance and sale of the Bonds. The Resolution constitutes a valid and binding obligation of the Issuer, enforceable against the Issuer in accordance with its terms thereof and contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

5. The Bonds have been duly authorized, issued, executed and delivered by the Issuer to the Authority and are valid, legally enforceable and binding special obligations of the Issuer, payable from the Net Revenues of the System and secured by a first lien on and a pledge of the Net Revenues of the System, on a parity with respect to liens, pledge and source of and security for payment with the Issuer's Sewerage System Revenue Bonds, Series 1999 A (West Virginia SRF Program), Sewerage System Revenue Bonds, Series 1999 B (West Virginia Infrastructure Fund) and Sewer Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), issued concurrently herewith, all in accordance with the terms of the Bonds and the Resolution.

6. Under the Act, the Bonds and the interest thereon are exempt from taxation by the State of West Virginia and the other taxing bodies of the State.

7. The Bonds have not been issued on the basis that the interest, if any, thereon is or will be excluded from the gross income of the owners thereof for federal income tax purposes. We express no opinion regarding the excludability of such interest, if any, from the gross income of the owners thereof for federal income tax purposes or other federal tax consequences arising with respect to the Bonds.

8. The Prior Notes have been paid within the meaning and with the effect expressed in the Prior Resolution, and the covenants, agreements and other obligations of the Issuer to the registered owners of the Prior Notes have been satisfied and discharged. In rendering the opinion set forth in this paragraph, we have relied upon the certificate of the West Virginia Water Development Authority stating that it has received the Series 2005 A Bonds, the Series 2005 B Bonds and the Series 2005 Notes in exchange for the Prior Notes and that such exchange is sufficient to release and discharge the liens, pledges and encumbrances securing the Prior Notes.

No opinion is given herein as to the effect upon the enforceability of the Bonds under any applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights or the exercise of judicial discretion or principles of equity in appropriate cases.

Lubeck Public Service District
West Virginia Infrastructure and Jobs Development Council
West Virginia Water Development Authority
September 27, 2005
Page 4

We have examined the executed and authenticated Bond numbered BR-1 and in our opinion, the form of said Bond and its execution and authentication are regular and proper.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jack Kelly". The signature is written in a cursive style with a horizontal line above the first name.

09/02/05
101090/00309

September 27, 2005

Lubeck Public Service District
Washington, West Virginia

West Virginia Infrastructure and Jobs Development Council
Charleston, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

Re: Lubeck Public Service District
Sewerage System Bond Anticipation Notes,
Series 2005 (West Virginia Infrastructure Fund)

Ladies and Gentlemen:

We have served as bond counsel to Lubeck Public Service District (the "Issuer") in connection with the issuance of its Sewerage System Bond Anticipation Notes, Series 2005 (West Virginia Infrastructure Fund), dated the date hereof (the "Notes").

We have examined certified copies of proceedings and other papers relating to the authorization of (i) a loan agreement for the Notes, dated September 27, 2005, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), and (ii) the Notes to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Notes are issued in the principal amount of \$6,278,679, in the form of one note, registered to the Authority, bearing no interest, with principal payable in annual instalments of \$100 on June 1, 2006, June 1, 2007, June 1, 2008 and June 1, 2009, and with the entire outstanding principal payable in full on March 1, 2010, all as set forth in the Schedule Y attached to the Loan Agreement and incorporated in and made a part of the Notes.

The Notes are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 16, Article 13A and Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended (collectively, the "Act"), for the purposes of (i) refunding the Issuer's Sewerage System Bond Anticipation Notes, Series 1999 (West Virginia Infrastructure Fund) (the "Prior Notes"); and (ii) paying costs of issuance and related costs.

We have also examined the applicable provisions of the Act and a Resolution duly adopted by the Issuer on September 22, 2005, as supplemented by a Supplemental Resolution duly adopted by the Issuer on September 22, 2005 (collectively, the "Resolution"), pursuant to and under which Act and Resolution the Notes are authorized and issued, and the Loan Agreement is entered into. The Notes are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Resolution and the Loan Agreement. All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Resolution and the Loan Agreement when used herein.

Based upon the foregoing and upon our examination of such other documents as we have deemed necessary, we are of the opinion, under existing law, as follows:

1. The Issuer is a duly created and validly existing public service district and is a public corporation and a political subdivision of the State of West Virginia, with full power and authority to refund the Prior Notes, to operate and maintain the System, to adopt the Resolution and to issue and sell the Notes, all under the Act and other applicable provisions of law.
2. The Loan Agreement has been duly authorized by and executed on behalf of the Issuer and is a valid and binding special obligation of the Issuer, enforceable in accordance with the terms thereof.
3. The Loan Agreement inures to the benefit of the Authority and the Council and cannot be amended so as to affect adversely the rights of the Authority and the Council or diminish the obligations of the Issuer without the written consent of the Authority and the Council.
4. The Issuer has legally and effectively adopted the Resolution and all other

necessary resolutions in connection with the issuance and sale of the Notes. The Resolution constitutes a valid and binding obligation of the Issuer, enforceable against the Issuer in accordance with its terms thereof and contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

5. The Notes have been duly authorized, issued, executed and delivered by the Issuer to the Authority and are valid, legally enforceable and binding special obligations of the Issuer. There are outstanding obligations of the Issuer which will rank senior and prior to the Notes as to liens, pledge and source of and security for payment, being the Issuer's Sewerage System Revenue Bonds, Series 1999 A (West Virginia SRF Program), Sewerage System Revenue Bonds, Series 1999 B (West Virginia Infrastructure Fund), Sewer Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), and Sewer Revenue Bonds, Series 2005 B (West Virginia Infrastructure Fund) (collectively, the "First Lien Bonds"). The Notes shall be issued junior and subordinate to the First Lien Bonds with respect to liens, pledge and source of and security for payment and in all other respects. The Notes shall be payable only from the proceeds of any grants, any sewerage system revenue bonds, refunding revenue bonds or bond anticipation notes of the Issuer, issued subsequent to the issuance of the Notes.

6. Under the Act, the Notes and the interest thereon are exempt from taxation by the State of West Virginia and the other taxing bodies of the State.

7. The Notes have not been issued on the basis that the interest, if any, thereon is or will be excluded from the gross income of the owners thereof for federal income tax purposes. We express no opinion regarding the excludability of such interest from the gross income of the owners thereof for federal income tax purposes or other federal tax consequences arising with respect to the Notes.


8. The Prior Notes have been paid within the meaning and with the effect expressed in the Prior Resolution, and the covenants, agreements and other obligations of the Issuer to the registered owners of the Prior Notes have been satisfied and discharged. In rendering the opinion set forth in this paragraph, we have relied upon the certificate of the West Virginia Water Development Authority stating that it has received the Series 2005 A Bonds, the Series 2005 B Bonds and the Series 2005 Notes in exchange for the Prior Notes and that such exchange is sufficient to release and discharge the liens, pledges and encumbrances securing the Prior Notes.

Lubeck Public Service District
West Virginia Infrastructure and Jobs Development Council
West Virginia Water Development Authority
September 27, 2005
Page 4

No opinion is given herein as to the effect upon the enforceability of the Notes under any applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights or the exercise of judicial discretion or principles of equity in appropriate cases.

We have examined the executed and authenticated Note numbered R-1 and in our opinion, the form of said Note and its execution and authentication are regular and proper.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jack Kelly" followed by some initials or a flourish.

08/26/05
101090/00309

M0464395.1

RICHARD A. HAYHURST
ATTORNEY AT LAW
POST OFFICE BOX 86
PARKERSBURG, WEST VIRGINIA 26102-0086
414 MARKET STREET

RICHARD A. HAYHURST
ANDREW C. WOOFER, III

AREA CODE 304
TELEPHONE 422-1445
FACSIMILE 428-2674

September 27, 2005,
Our 34th Year.

Lubeck Public Service District
Washington, West Virginia

West Virginia Infrastructure and Jobs Development Council
Charleston, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

Jackson Kelly PLLC
Charleston, West Virginia

In re: Lubeck Public Service District Sewer Revenue Bonds,
Series 2005 A (West Virginia Infrastructure Fund),
Series 2005 B (West Virginia Infrastructure Fund) and
Sewerage System Bond Anticipation Notes,
Series 2005 (West Virginia Infrastructure Fund)

Ladies and Gentlemen:

I am counsel to Lubeck Public Service District (the "Issuer"). As such counsel, I have examined copies of the approving opinion of Jackson Kelly PLLC, as bond counsel, relating to the above-captioned bonds of the Issuer (collectively, the "Bonds"), and the above-captioned notes of the Issuer (the "Notes"), a loan agreement for each series of the Bonds and the Notes, all dated September 27, 2005, including all schedules and exhibits attached thereto (collectively, the "Loan Agreement"), by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), a Resolution duly adopted by the Public Service Board of the Issuer (the "Board") on September 22, 2005, as supplemented by a Supplemental Resolution duly adopted on September 22, 2005 (collectively, the "Resolution"), orders of The County Commission of Wood County relating to the Issuer and the appointment of members of the Board, and other documents relating to the Bonds and the Issuer. All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Loan Agreement and the Resolution when used herein.

RICHARD A. HAYHURST
ATTORNEY AT LAW

Lubeck Public Service District
West Virginia Infrastructure and Jobs Development Council
West Virginia Water Development Authority
Jackson Kelly PLLC
September 27, 2005
Page Two

I am of the opinion that:

1. The Issuer is a duly created and validly existing public service district and is a public corporation and political subdivision of the State of West Virginia, with full power and authority to refund the Prior Notes, to operate and maintain the System and to adopt the Resolution, all under the Act and other applicable provisions of law.
2. The members and officers of the Board have been duly and properly appointed and elected, have taken the requisite oaths and are thereby authorized to act on behalf of the Issuer in their respective capacities.
3. The Loan Agreement has been duly authorized, executed and delivered by the Issuer and, assuming due authorization, execution and delivery by the Authority, constitutes a valid and binding agreement of the Issuer, enforceable in accordance with its terms.
4. The Resolution has been duly adopted by the Board and is in full force and effect.
5. The execution and delivery of the Bonds and the Notes and the Loan Agreement and the consummation of the transactions contemplated by the Bonds and the Notes, the Loan Agreement and the Resolution, and the carrying out of the terms thereof, do not and will not, in any material respect, conflict with or constitute, on the part of the Issuer, a breach of or default under any resolution, agreement or other instrument to which the Issuer is a party or any existing law, regulation, court order or consent decree to which the Issuer is subject.
6. The Issuer has received all permits, licenses, approvals, consents, exemptions, orders, certificates, registrations and authorizations necessary for the creation and existence of the Issuer, the issuance of the Bonds and the Notes, the refunding of the Prior Notes, the operation of the System and the imposition of rates and charges for the use of the System, including, without limitation, all requisite permits, approvals, orders and certificates from The County Commission of Wood County, the Council, the West Virginia Department of Environmental Protection and the Public Service Commission of West Virginia (the "PSC"). The Issuer has taken all actions required for the imposition of such rates and charges, including, without limitation, the adoption of a resolution prescribing such rates and charges. The Issuer has received the PSC Order entered on March 21, 2005, in Case No. 05-011 5-PSD-PC, approving the refunding of the Prior Notes through the issuance of the Bonds and the Notes and the PSC Order entered July 31, 1998, in Case No. 98-0009-PSD-CN, approving the rates for the System. The time for appeal of both Orders has expired prior to the date hereof. Both Orders are in full force and effect.

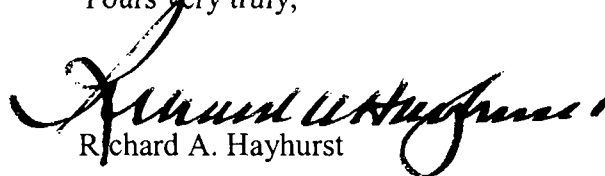
RICHARD A. HAYHURST
ATTORNEY AT LAW

Lubeck Public Service District
West Virginia Infrastructure and Jobs Development Council
West Virginia Water Development Authority
Jackson Kelly PLLC
September 27, 2005
Page Three

7. To the best of my knowledge, there is no litigation, action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Loan Agreement, the Bonds, the Notes and the Resolution, the operation of the System, the validity of the Bonds and the Notes, the collection of the Gross Revenues, the pledge of the Net Revenues for the payment of the Bonds or the pledge of the proceeds of additional revenue bonds, refunding bonds, bond anticipation notes and grants for the payment of the Notes.

All counsel to this transaction may rely upon this opinion as if specifically addressed to them.

Yours very truly,


Richard A. Hayhurst

RAH:dw